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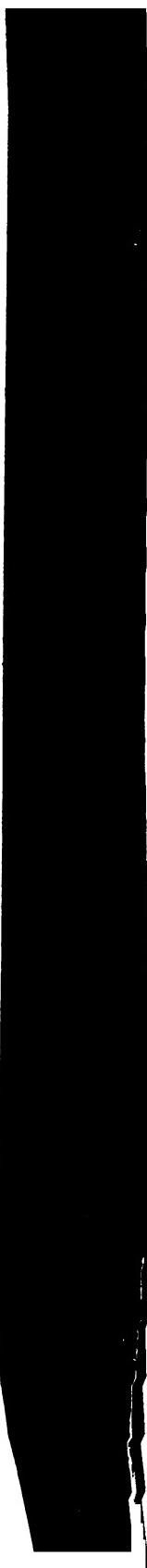
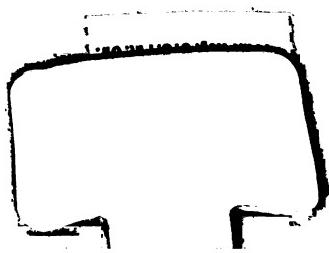
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PAPERS

OF THE

AMERICAN  
HISTORICAL ASSOCIATION

VOL. I. No. 5

HISTORY

OF

THE APPOINTING POWER

OF THE

PRESIDENT

BY

LUCY M. SALMON

NEW YORK & LONDON

G. P. PUTNAM'S SONS

The Knickerbocker Press

1886.

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HISTORY  
OF  
THE APPOINTING POWER  
OF THE  
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"The President . . . shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

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# HISTORY OF THE APPOINTING POWER OF THE PRESIDENT.

## I.

### ESTABLISHMENT OF THE APPOINTING POWER.

THE framers of the Constitution were apparently led by three considerations to give the appointing power the form it ultimately took in the Philadelphia Convention: first, by their observation of the English method; second, by their own experience under the Articles of Confederation; third, by the plans in operation in the individual States.

In England, the Prime-Minister, by gifts of office, as well as of money, had made himself virtually irresponsible, and had reduced the practice of corruption to a science. Even among the extremists, none were found who openly advocated placing the power in the hands of the Executive alone.

Under the Articles of Confederation all appointments had of necessity been made by the general Congress.<sup>1</sup>

The majority were convinced that it was equally unwise to place unlimited control in such a body. The cry of corruption had already been raised, and not altogether without excuse.<sup>2</sup> Yet no one wished to take from the Legislature all voice in the matter.

In the various States, there had been no uniform practice. In the majority, however, appointments had been made by

<sup>1</sup> "The United States in Congress assembled shall have authority to appoint . . . such. . . civil officers as may be necessary for managing the general affairs of the United States under their direction."—Art. of Con., art. ix.

<sup>2</sup> Curtis, vol. ii., p. 248.

both Houses of the Legislature, or by the Governor with the consent of the Legislature, or his advising council.<sup>1</sup> In none had the method employed seemed perfect, and in some the complaints were loud.<sup>2</sup>

The question before the convention was, how to embody all the excellencies and avoid all the evils of the different systems with which they were familiar.<sup>3</sup> Three plans were submitted for the consideration of the convention, and a fourth, while not formally presented, undoubtedly had great influence.

The Virginia resolutions,<sup>4</sup> drawn up by Mr. Randolph, provided that the Executive and the Judiciary should be chosen by the National Legislature, but a check was placed on its power by making the members of both branches ineligible to any office during their time of service or for a term of years after its expiration.<sup>5</sup> No special provision was made for the appointment of officers, but the President was "to enjoy the executive rights vested in Congress by the Confederation." This might include the power of appointment, but as the Executive was to be chosen by both Houses of the Legislature, the control would in a measure ultimately rest with them.

The New Jersey plan,<sup>6</sup> offered by Mr. Patterson, differed somewhat from that of Virginia. The executive office was

<sup>1</sup> Compare the constitutions of the States in 1789. Poore's "Charters and Constitutions."

<sup>2</sup> Mr. Williamson, of N. C., said he had scarcely seen a single corrupt measure in the Legislature which could not be traced to office-hunting. Elliot, v., p. 423. Mr. Mason and Mr. Madison said substantially the same thing in regard to Virginia. Elliot, v., 230, 232. Mr. Hamilton, after observing for ten years the working of the N. Y. Constitution, felt that the system was far from perfect.—*The Federalist*, No. 77.

<sup>3</sup> How difficult the task was considered at the time, we may judge from a letter of Mr. Madison, written April 16, 1787. He expresses his views very fully on all other points of the proposed Constitution, but says of the Executive, "I have scarcely ventured to form my own opinion yet . . . of authorities with which it ought to be clothed."—Madison, Works, i., 287–292.

<sup>4</sup> Elliot, v., pp. 127, 128.

<sup>5</sup> This limitation was doubtless owing to the "shameful partiality of the Legislature of Virginia to its own members." Elliot, v., p. 230.

<sup>6</sup> Elliot, v., pp. 191, 192.

to be held by two or more persons who were given power to appoint all federal officers, including the Judiciary; but, as they were themselves to be elected by Congress, that body would have great influence over appointments, and as its members were not to be ineligible to office, the plan was open to grave objections.

Mr. Charles Pinckney's plan<sup>1</sup> more nearly resembled the present system. The executive power was to be vested in a single person, who was to commission all officers of the United States, and, except ambassadors, other ministers, and judges of the Supreme Court, to nominate and, with the consent of the Senate, appoint all officers of the general government. The Senate was to have exclusive power to appoint those officers of whom exception was made, but its members were to be ineligible to office during their term of service and for one year afterward. Members of the Lower House were also not to receive office while sitting in Congress.

Mr. Hamilton's plan,<sup>2</sup> which was intentionally theoretical rather than practical, gave to the Executive, elected by electors, the sole appointment of the heads of the departments of finance, war, and foreign affairs, and the nomination of all other officers, including ambassadors, subject to the approbation or disapproval of the Senate.

The essential differences of these projects, as they were considered by the convention, may be summed up in the questions, Shall the appointing power be given exclusively to one or both Houses of Congress, or shall it be given to the Executive subject to legislative control? In either case, shall the appointing power be limited in its choice to those who are not members of Congress?

The timid ones, who were still haunted by the fear of "monarchy," favored placing the chief power in Congress, but making its members ineligible to office, thus avoiding, as they thought, too great power in the hands of one man, and removing a means of temptation from a numerous body. But the more resolute, far-sighted members knew that if the Executive was to be an executive in more than name, he

<sup>1</sup> Elliot, v., pp. 129-132.

<sup>2</sup> Elliot, v., p. 205.

must be given adequate powers, unhampered by needless restrictions; that if he was to carry out the will of the people and be responsible to them, he must be given the choice of his servants; that corruption among many was more to be feared than abuse of power on the part of one; but that as it is sometimes necessary "to supply the want of wisdom or virtue in one department by the wisdom or virtue of another," he should be provided with a definite, constitutional means of seeking advice. In the end these views prevailed, though not without a long and bitter contest, while the question of eligibility of members was settled by one of the minor compromises of the Constitution. In order to understand the full meaning of these results, it is necessary to notice the successive steps by which they were reached.

July 26th, two months after the convention assembled, a series of resolutions<sup>1</sup> was referred to the Committee of Detail, with instructions to report a constitution in conformity with them. As expressed in these resolutions, it was the opinion of the majority that the Executive should be chosen by the Legislature and given the power of appointment, except in the case of judges of the Supreme Court. These were to be elected by the Upper House of Congress, who were to be ineligible to office during their term of service and one year thereafter, while members of the Lower House were also to be ineligible during their term of service. This indirectly gave more control over appointments to the Legislature than to the Executive. The draft submitted by the committee, August 6th,<sup>2</sup> included these recommendations, varying only by giving to the Senate the additional power of appointing ambassadors. But these provisions were far from satisfactory, and no decision could be reached. With the exception of the eligibility of members, the entire question was again referred to the Committee of Eleven, and on September 4th they presented their report.<sup>3</sup> It differed greatly from the resolutions of July 26th and the draft of August 6th, in giving more power to the Executive. The

<sup>1</sup> Elliot, v., pp. 375, 376.

<sup>2</sup> Elliot, v., pp. 376-381.

<sup>3</sup> Elliot, i., p. 283; v., 507.

control of all appointments was given him, but abuse of that power was prevented by giving the Senate a veto on injudicious nominations. In a word, instead of dividing the appointing power between the Executive and the Senate, and allowing each to be independent of the other, it was united in one, but a negative given to the other. After a few minor changes in detail, this is the report adopted September 17th.<sup>1</sup>

The ineligibility of members of Congress to any other office had been insisted upon, for reasons already mentioned, from the very beginning.<sup>2</sup> The Virginia plan and that of Mr. Pinckney had placed great emphasis on this point. The abuse of the privilege in Great Britain, under the Confederation,

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<sup>1</sup> That even this plan did not meet the views of all, is evident from the correspondence that took place between John Adams and Roger Sherman. Mr. Adams favored giving the President the entire power, and depriving the Senate of all voice in the matter. The discussion is interesting as showing that, however groundless most of his fears have since proved, he appreciated in a measure some of the dangers that have arisen on account of giving this power to the Senate. His objections to a negative by the Senate are in substance as follows:

1. It lessens the responsibility of the President. 2. The time of the Senate is taken from legislative and given to executive matters. 3. The people ought to be free to watch the Executive, and not divide their time between him and the Senate. 4. It has a tendency to excite ambition in the Senate. Every member will be tempted to use his influence to secure appointments for those who will elect his friends and defeat his enemies, thus introducing corruption. 5. It will involve the Senate in censure and suspicion, without doing any good. 6. As soon as parties arise, these parties in the Senate will give rise to divisions on every nomination. 7. The whole business of the government will be delayed on account of the disproportionate demands upon the time of the Senate. 8. It will weaken the hands of the Executive by lessening the obligation and gratitude of the candidate to the President, and dividing it between him and the Senate.

Mr. Sherman's reply is briefly: 1. Without this power of the Senate, the President is a despot. 2. The Executive is to carry out the will of the Legislature declared by the laws. The Senate will accomplish that end by advising appointments that will be most likely to effect it. 3. The Senate will be watchful of any infringement of the rights of the States. 4. The Senate will be superior to faction, intrigue, or artifice in securing appointments. They can not hold office themselves, and will be diffident about suggesting friends, lest they be accused of partiality.

The correspondence is given in full in Pitkin, vol. ii., pp. 285-291.

<sup>2</sup> Massachusetts, in her first instructions to her delegates, had forbidden them to accept any modification of the Articles of Confederation which did not include this provision.—Curtis, ii., p. 249.

tion, and in many of the States, could not reconcile the convention to the theoretical advantages of the opposite course. Mr. Madison and his associates failed to convince the majority that the appointing power must have freedom of choice, and that restriction was degrading both to the Executive and to Congress.<sup>1</sup> As late as the draft of August 6th this condition was insisted upon. It was not until September 3d<sup>2</sup> that a compromise was effected between those who demanded entire exclusion of members from office and those who claimed for the Executive the privilege of selection. By this compromise members of Congress were excluded from any office created during their time of service, and from holding any other position while in Congress.<sup>3</sup> This restriction was of great importance at that time, when a large proportion of the offices were of necessity new ones; but it has long since ceased to be any check upon either Executive or Congress.

We are thus able to trace from the very beginning the development of the idea that the appointing power must be given to the Executive rather than to Congress, even though restrictions be placed upon the latter. Such a result could not have been attained when the convention met; after long and frequent debates for three months and a half, it was one of the last measures decided upon before the assembly dissolved. It was a concession on the part of the States, and a concession in favor of theory rather than an acknowledgment that their individual systems had in the main been at fault. But though the delegates had assented to these terms, the States themselves were not all convinced of their wisdom. Among the first amendments suggested by Virginia before ratifying the Constitution was one disqualifying members of Congress from holding federal office during the period for which they were chosen,<sup>4</sup> and North Carolina proposed a similar one.<sup>5</sup> While in no sense affecting the end gained, these propositions well illustrate the sentiment of the people on that point.

<sup>1</sup> Elliot, v., pp. 420, 504, 505.

<sup>2</sup> Elliot, i., p. 282.

<sup>3</sup> Constitution, art. i., sec. 6, par. 2.

<sup>4</sup> Elliot, iii., p. 659.

<sup>5</sup> Elliot, iv., 245.

## II.

### THE INTERPRETATION OF CONGRESS IN 1789.

THE Constitution was adopted, but however explicitly its framers may have supposed that they had settled all its provisions in regard to the appointing power, there were many incidental questions connected with it still open for discussion. The most important of these that have been made the subject of legislative and judicial interpretation are the following:

1. Does the appointing power include the removing power?
2. If so, does the removing power belong to the President, or to the President and Senate?
3. If it belongs to the President, can Congress give any duration of office not subject to the power of removal?
4. Can the Executive create an office by appointing the officer?
5. Who are "inferior officers"?
6. What construction shall be put upon the power of the President to fill vacancies that may happen during the recess of the Senate?
7. When is the appointment of an officer to be deemed complete?
8. When Congress delegates the appointment of "inferior officers," can it prescribe the term of office and manner in which, and by whom, removals shall be made?
9. When the tenure of office is not provided for by the Constitution, is it to be held at pleasure or during good behavior?

The questions in regard to removals were among the first to be discussed during the first session of Congress in 1789,

in connection with the establishment of the executive departments.<sup>1</sup> It seems best to consider in detail the various steps taken and the arguments advanced, first, for the reason stated by an eminent English jurist, "great regard ought, in construing a law, to be paid to the construction which the sages, who lived about the time or soon after it was made, put upon it, because they were best able to judge of the intention of the makers at the time when the law was made (*contemporaria expositio est fortissima in legem*"); and secondly, because the construction then put upon the Constitution remained in force for seventy-five years; third, because it is the arsenal from which is derived all the ammunition used in every succeeding debate on the subject; fourth, because it shows how largely the element of speculation entered into all the discussions, and that while difficult to refute many of the theories advanced, the experience of the country has, in many respects, modified them.<sup>2</sup>

The history of the measures introduced, and of the arguments presented, is as follows:

On the 19th of May, 1789, Mr. Madison introduced into the House a resolution looking to the establishment of a Department of Foreign Affairs, at the head of which should be an officer "appointed by the President by and with the advice and consent of the Senate, and to be removable by the President." The objection was raised that the words "who shall be appointed by the President by and with the advice and consent of the Senate" were superfluous, as such power was expressly given by the Constitution. As all conceded this, the debate took place on the clause, "to be removable by the President." While before the Committee of the Whole an amendment was proposed, adding the words, "by and with the advice and consent of the Senate," but it was lost and the question carried, by a considerable majority, in favor of declaring the power of removal to be in the President.<sup>3</sup> May 22d, the House appointed a committee

<sup>1</sup> Annals of Congress, 1st Cong., 1st session, pp. 368, 456-585, 592-613

<sup>2</sup> Story, ii., p. 342. Note by Judge Cooley.

<sup>3</sup> Annals, 1st Cong., 1st sess., pp. 368-383.

of eleven<sup>1</sup> to prepare a bill in accordance with the resolution passed, and on June 16th the bill thus prepared came up for discussion in Committee of the Whole. The debate occupied four entire days, and on the 19th a motion to strike out the clause "to be removable by the President" was lost by a vote of twenty to thirty-four. June 22d, the bill was taken up by the House, when Mr. Benson proposed an amendment which would *imply* that the power of removal was in the President,<sup>2</sup> stating that, if carried, he would move to strike out the words "to be removable by the President." The amendment was offered on the ground that the bill, as it stood, gave the President a power which was vested in him by the Constitution, and that the House should not seem to grant a privilege which the same authority might at any time withdraw. It was supported by Mr. Madison and those who favored removal by the President, as it would be a concession to those who thought the question could not be made the subject of legislative discretion, and yet would express the sentiment of the House. The amendment giving implied power of removal to the President was carried by a vote of thirty to eighteen, and the clause expressly granting him that power was struck out by a vote of thirty-one to nineteen. The engrossed bill passed June 24th, twenty-nine in favor, twenty-two against.<sup>3</sup> The bill came up in the Senate July 14th, and was carried four days later by the casting vote of the Vice-President, Mr. Adams.<sup>4</sup>

In the debates in the House<sup>5</sup> the members were all agreed,

<sup>1</sup> Three of the eleven had been delegates at the Philadelphia Convention.

<sup>2</sup> The amendment was that "whenever said principal officer shall be removed by the President of the U. S., etc., the chief clerk shall perform the duties of the office.

<sup>3</sup> Of the twenty-nine in favor, five had been members of the Philadelphia Convention, and a sixth, whose name does not appear on account of absence, was also in favor. The name of only one person appears on the negative who was in the convention.

<sup>4</sup> The reasons which led Mr. Adams to decide the question thus may be inferred from his correspondence with Mr. Sherman, p. 13, note; also from a letter to Mr. Jefferson from London, Dec. 6, 1787, in which he says: "Not a vote or voice would I have given to the Senate or any Senator." Works of J. Adams, viii., p. 464. He expresses the same idea, Works, vi., pp. 184, 185, 534, 539.

<sup>5</sup> For a partial sketch of the debate in the Senate see Maclay, pp. 104-114.

first, in the belief that the power of removal existed somewhere; and, second, in the desire to determine from the Constitution alone where it resided. All parties, however, discussed the question from the point of expediency, as well as of constitutionality. Four interpretations of the Constitution were given: first, that the power of removal was to be exercised by the President alone; second, that it was to be exercised by him only with the advice and consent of the Senate; third, that officers could be removed only by impeachment; fourth, that the Constitution had left the question to be regulated by Congress.

The first interpretation was the one held by Mr. Madison and the majority of the House. They based their arguments on the ground of constitutionality on these propositions: All offices not held expressly during good behavior, are by implication held at pleasure, and at the pleasure of the appointing power. The executive authority, which is vested in the President alone, must include both that of appointing and of removing. As the President is to see that the laws are faithfully executed, he must have means of displacing unfaithful servants; otherwise he is himself subject to impeachment, and the Constitution can not intend to tie his hands by giving him no prevention. Under all circumstances, except impeachment, the power which appoints must also remove, and by the direct words of the article, the President is to nominate and appoint all officers, the Senate having no voice in nominating, and merely a negative on appointments, "without ability to offer original propositions." While the power of impeachment is a supplemental security, this can not be the only way of removal, as it would prove insufficient. It could not have been intended to give the Senate a share in removals, inasmuch as they are to be the judges in impeachment, and could not be impartial ones if they had already passed an opinion on an officer. The prevailing idea of the Constitution is to separate entirely the legislative, executive, and judicial departments; this plan is frustrated if the Senate is to have a share in removals. It virtually places the Senate above the President,

by making it the judge, in case of removal, between the President on one side and the officer on the other. The President will never remove a worthy officer, as such an act would subject him to impeachment and removal.<sup>1</sup>

The principal reasons in favor of this interpretation drawn from expediency were, that by including the Senate in the decision concerning removals, it lessened the responsibility of the President, while the spirit of the Constitution demands the highest degree of responsibility in all executive officers. The President should be accountable at all times for the conduct of his subordinates; the only bond between them is his confidence in their integrity and talents, and when this confidence ceases, he alone should terminate the connection. If he suffered any one of them unpunished to trespass against the government, or if he neglected to superintend their conduct, he would himself be liable to removal. Take away this power of removal from the President, and it makes him a mere figure-head. Give it to the Senate, and faction, intrigue, and party spirit will foster a corruption that will prove fatal; the government becomes an aristocracy like that of Poland, infinitely more dangerous to the liberties of the people than a simple despotism could ever be. If the Senate is to share in this power, it must be kept in constant session, which will be a severe drain upon the treasury. But even thus a large share of its time must be given to executive work, to the neglect of its own proper legislative duties. Even if the President has control over the officers of the treasury, it gives him no control over the moneys of the treasury, as nothing can be taken from it without special appropriation. Impeachment alone would not be an adequate means of removal, as many become incapacitated for their duties without being subject to trial by the law.<sup>2</sup> "The danger to liberty has not yet

<sup>1</sup> This argument, presented by Mr. Madison, has apparently been more frequently quoted than any other opinion he ever expressed. His words were: "I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust."—Annals, 1st Cong., 1st sess., p. 498.

<sup>2</sup> The principal argument against the impeachment theory was drawn by this side from the length of the trial of Warren Hastings, then in progress.

been found to lie so much in the facility of introducing improper persons into office, as in the difficulty of displacing those who are unworthy of public trust."<sup>1</sup> In the President alone lies the only simple and sure means of removal. No unworthy man will ever be chosen to this high office, and the power may safely be entrusted to him, with the checks which the Constitution places upon its abuse.

The party which favored the union of the President and the Senate in the removing power, was led by Mr. White, supported by a considerable minority. They denied *in toto* that the power either of appointing or of removing was an executive one.<sup>2</sup> A chief magistrate is a necessary evil whose powers have been limited by the Constitution. The power of removal is included in that of appointment, but both are vested in the Senate and President. In the same section of the Constitution, the clause immediately preceding gives the treaty-making power to the President, but the consent of two thirds of the Senate is necessary for its completion. The juxtaposition of the appointing power can only mean that the Senate is to have an equal part with the President in making appointments as well as treaties.<sup>3</sup> The Constitution expressly states that the President shall appoint only with the consent of the Senate; he can therefore remove only on the same condition. The influence of the Senate becomes nugatory if deprived of its ability to displace. In extreme cases the President can temporarily suspend as well as appoint. Since the same qualities of mind are necessary to remove as to appoint, the intention must have been to give a share in both to the Senate.<sup>4</sup> The President can

<sup>1</sup> Madison, Debates, 1st sess., 1st Cong., p. 498.

<sup>2</sup> They failed to show that it was either a legislative or a judicial power. Mr. Gerry dwelt specially on this point, basing his assumption on the practice of the individual States, where appointments and removals were not considered executive functions. If the States had given no such power to the governors, the Constitution could not give it to the President.

<sup>3</sup> Gen. Logan made important use of this argument in the impeachment trial.—*Globe*, 40, 2d sess.

<sup>4</sup> Mr. Stone brings up this argument, and insists that a number of men are not more likely to do wrong than one man.

not be impeached for removing a worthy officer if the Legislature has placed the act at his discretion.

More especially it was maintained on the side of expediency that the direct, unavoidable effect would be, if the Senate were not included, to make the President a despot,<sup>1</sup> the danger lying specially in the control it would give him over the public treasury. He could never be impeached if the way was open for him to apply all the sources of the revenue to cover up his crimes. All offices should be filled by persons of integrity and ability, but such men will not leave their private business to accept office if they are subject to removal at the caprice of the Executive. Every man should have a fair trial, but this can never be secured if the President is to displace at pleasure. The responsibility of the President is lessened by giving him so much authority, as he can prevent his own impeachment by making his accusers and judges dependent officers. The Senate is more responsible than the President can be, as they must keep a

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<sup>1</sup> Mr. Page, of Virginia, saw in the clause under discussion "the seeds of royal prerogative," and warned the House that the energy desired by the other party "has led many patriots to the bastile, to the halter, and to the block." Mr. Jackson already saw the President transformed into a monarch, and exclaims : "Behold the baleful influence of royal prerogative, when officers hold their commissions during the pleasure of the crown!" Mr. Scott, of Penn., did good service for the opposite side by the effectual use of a little ridicule. He says : "The arguments . . . consist in this : the raising of a great number of frightful pictures which at first sight appear very terrible ; but when they are attentively contemplated, they appear to be the vagaries of a distorted imagination. The most frightful of all that has been brought into view is that the Treasurer must be the mere creature of the President, and conform to all his directions, or he arbitrarily removes him from office and lays violent hands on the money-chest. Then having the sword and the purse, you see the President boldly advancing, supported by the army and navy, and the money-chest in the background, engaging the liberties of the people. Armed with all the omnipotence of power, the protector rushes onward with irresistible impetuosity. So sudden and fatal is the stroke, that the expiring genius of America has hardly time to say, Farewell, Liberty ! Thus despotism rides triumphant, and freedom and happiness are trampled in the dust."

The picture he draws scarcely exaggerates, either in style or matter, that presented by the anti-monarchists. All history, sacred and profane, ancient, mediæval, and modern, was called into requisition to furnish examples of the evil results which would follow from giving the President this power.

journal of all proceedings, and the State Legislatures will keep a strict watch over them, while the electors of the President are disbanded and they are not responsible for his misconduct. The Senate can be reached by those electing them, the President can not.

The impeachment theory was sustained by Mr. Smith, of South Carolina, with a doubtful following of one or two others. But it is unnecessary to give his arguments in detail, as they have never been of weight in subsequent discussions. The same is also to be said of the fourth interpretation.

At the close of the debate, four important conclusions had been reached :

1.—That the appointing power includes the removing power.

2.—That both belong to the President, the Senate having simply a negative on appointments.

3.—Where the tenure of office has not been provided for by the Constitution, the office is held at the pleasure of the appointing power.

4.—Heads of departments are not "inferior officers."

The significance of this result is plain. It indicates a still higher development of the idea that the Executive must be in reality as well as in name the head of the nation, though at all times responsible to it.

When the convention met in 1787, the Executive was considered a necessity, to be hedged in in every possible way lest he should abuse the little power granted him. A long stride in advance of this idea was taken before the convention closed, but the result was only partially secured. If the leaders had hoped ultimately to gain more than this, they did not venture to express such a desire. The people must be educated up to the standard already gained before a higher one could be set up. *The Federalist*<sup>1</sup> had sought to quiet the fears of those who thought that the Constitution gave the President too much control over appointments, by saying that "no one could fail to perceive the entire safety of the power of removal if it must thus be exercised in con-

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<sup>1</sup> No. 77, April 4, 1788.

junction with the Senate." This interpretation was accepted, but Congress, in 1789, went still farther, and by construing the Constitution so as to give the President the power to remove his officers at pleasure, acknowledged an authority in him not thought of by the masses of the people in May, 1787, and doubtless believed impossible to secure in May, 1789. No more important illustration can be found of the growth of the national over the confederate idea than is seen in the progress made concerning the appointing power from May, 1787, to July, 1789.<sup>1</sup>

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<sup>1</sup>The charge was made during the debate, and has been repeatedly made since, that the result was brought about only by the high character of the President then in office. It may be in a measure true, but it only serves to suggest another phase of the subject. Mr. Madison was not the only one who could not imagine an unworthy man in the Presidential chair. Hamilton had written in *The Federalist*, No. 76, that a President would be "ashamed and afraid to bring forward for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure." It may have been "excessive admiration of themselves," which led them to believe that the people would never elect to the office of President a person of less exalted character, yet certainly the position was for many years thus filled. It is important to notice how little difficulty attended the matter of appointments when the Constitution was formed and Congress met. It was said by Mr. Ames that it would be well if the President could personally perform all executive duties; and it was held throughout the debate that since he could not do this, it must be his duty constantly to watch the work delegated by him to his subordinates. As an illustration of the comparative ease with which this could at that time be done, and of the large increase in the number of civil officers which the rapid growth of the country soon demanded, we have taken, as a single example, the state of the post-office department from 1789-1817,

The number of officers was:

1789 . . . . .	75	1799 . . . . .	677	1809 . . . . .	2,012
1790 . . . . .	75	1800 . . . . .	903	1810 . . . . .	2,300
1791 . . . . .	89	1801 . . . . .	1,025	1811 . . . . .	2,403
1792 . . . . .	195	1802 . . . . .	1,114	1812 . . . . .	2,610
1793 . . . . .	209	1803 . . . . .	1,258	1813 . . . . .	
1794 . . . . .	450	1804 . . . . .	1,405	1814 . . . . .	
1795 . . . . .	453	1805 . . . . .	1,558	1815 . . . . .	3,000
1796 . . . . .	468	1806 . . . . .	1,710	1816 . . . . .	3,260
1797 . . . . .	554	1807 . . . . .	1,848	1817 . . . . .	3,459
1798 . . . . .	639	1808 . . . . .	1,944		

The statistics are from Seybert's *Annals*, p. 378.

### III.

#### THE APPOINTING POWER UNDER STATESMEN.

##### I.—THE FEDERALISTS.

THE theory of the appointing power was accepted ; the question of moment was : What would be its workings when carried into actual practice ? Provision had been made by which the officers of the old Confederation should remain in service until Congress could pass laws creating the officers of the new government. Thus several months elapsed, during which Washington had time to mature his plans, and those desiring positions to use every means to secure them. That office-seeking was not unknown in the golden age, we have abundant proof in the correspondence of Washington. Even before the government was fairly formed, or it was known who would be President, he received numerous letters asking for appointment in case these possibilities were realized.<sup>1</sup> When the result of the election was known, to one and all, friends, relatives, acquaintances, strangers, the unvarying reply was returned : "I will go to the chair under no preëngagement of any kind or nature whatsoever."<sup>2</sup> Laying aside every feeling that could possibly influence him as a private citizen,<sup>3</sup> he decided upon certain principles which should guide him in his selection. These were :

<sup>1</sup> Works of Washington, ix., pp. 371, 460, 461.

<sup>2</sup> Letter to Benj. Harrison, March 9, 1789, Works of Washington, vol. ix., p. 476. The same words are repeated in all of his letters at this time.—Vol. ix., pp. 460, 461, 478 ; x., pp. 136, 398.

<sup>3</sup> He writes to his nephew, Bushrod Washington : "However deserving you may be of the one (office) you suggest, your standing at the bar would not justify my nomination of you as Attorney at the Federal District Court in preference to some of the oldest and most esteemed general court lawyers in your own State who are desirous of this appointment."—Works, x., p. 24.

To a lady who ~~had~~ endeavored to arouse his sympathies in her behalf, he

1. Fitness of character to fill the office.<sup>1</sup>
2. Comparative claims by reason of service in the Revolution.<sup>2</sup>
3. As far as possible, proportionate distribution of appointments among the various States.<sup>3</sup>
4. Appointment of well-known men.<sup>4</sup>

Persons living at a distance he discouraged from making personal application, desiring only their name and testimonials as to ability, integrity, and fitness.<sup>5</sup> His desire to unite the interests of all parties led him to invite into his cabinet, and to appoint to other positions, those whose political opinions did not harmonize with the views of their associates or with his own. The result of the plan, as regards cabinet officers, was not such as would justify a repe-

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writes that his feelings as a private individual would lead him to help her, but as a public man he must be allowed to decide upon all points of duty without consulting his private inclinations and wishes.—Letter to Mrs. Wooster, May 21, 1789, vol. x., p. 6.

Later he writes : “ I have experienced the necessity in a variety of instances of hardening my heart against indulgencies of my warmest inclination and friendship.”—Vol. x., p. 398.

<sup>1</sup> “ In every nomination I have endeavored to make fitness of character my primary object.”—Works, i., p. 454 ; x., p. 87.

<sup>2</sup> Works, i., p. 455.

<sup>3</sup> “ My aim has been to combine geographical situation and sometimes other considerations with abilities and fitness of *known* characters.”—Vol. xi., p. 78.

Virginia, Pennsylvania, New York, Connecticut, Massachusetts, Maryland, and Georgia were represented in his cabinet ; in the Supreme Court judges were appointed from New York, Massachusetts, South Carolina, Maryland, Pennsylvania, North Carolina, Connecticut.

<sup>4</sup> “ Especially in the judicial departments my views have been much guided to those characters who have been conspicuous in their country. A readier confidence would be placed in them by the public than in others perhaps of equal merit who had never been proved.”—Vol. x., p. 66.

<sup>5</sup> He adds that beyond this nothing is necessary or can be of any avail in his decisions.—Vol. x., p. 6.

Of his success in preserving this strict impartiality, we have the most unequivocal testimony in the words of John Adams : “ No man, I believe, has any influence with the President. He seeks information from all quarters, and judges more independently than any man I ever knew. It is of so much importance to the public that he should preserve this superiority, that I hope I shall never see the time that any man will have influence with him beyond the power of reason and argument.”—Works of John Adams, ix., p. 561.

tition of the experiment.<sup>1</sup> In his later choice of confidential advisers he determined to select those only who could give hearty encouragement to the general policy of the government.<sup>2</sup> His regard for the letter as well as the spirit of the Constitution, is shown by his careful reports to the Senate of all temporary appointments made by him,<sup>3</sup> nor did he regard their "advise and consent" a mere nominal affair.<sup>4</sup> Few removals were made, and in no case does removal or failure to remove seem to have caused dissatisfaction.<sup>5</sup> The history

<sup>1</sup> Mr. Sparks says: "Jefferson performed the duties of his office without letting personal views bias his conduct. Yet there is a great difference between the reluctant performance of duty and the cordial and vigorous support of a willing mind. In all respects, therefore, these disagreements (with Hamilton) were unpropitious, embarrassing to the President, and injurious to the public welfare."—"Life of Washington," vol. i., p. 474.

<sup>2</sup> Sept. 15, 1795, he writes: "I shall not bring a man into any office of consequence knowingly whose political tenets are adverse to the measures which the general government are pursuing, for this, in my opinion, would be a sort of political suicide."—Works, xi., p. 74. A few days later, while hesitating to offer the position of Secretary of State to Patrick Henry, because ignorant of his political sentiments, he writes: "I should consider it an act of governmental suicide to bring a man into so high an office who was unfriendly to the Constitution and the laws which are to be his guide."—Works, vol. xi., p. 78.

<sup>3</sup> The first session of the first Congress adjourned Sept. 29, 1789; the second session met Jan. 4, 1790. Washington sent, Feb. 9th, a tabulated list of all appointments made during the interval, and nominated these persons regularly. The Senate confirmed all immediately.—Annals, vol. i., pp. 944-45.

This was shown very early in the case of the nomination of Col. Benj. Fishbourn as Naval Officer for the port of Savannah. The Senators from Georgia had expressed a preference for another person, and for that reason the nomination was rejected. The President sent a letter to the Senate, stating fully his reasons for the selection and his confidence that it had been a wise one, but out of deference to their wishes he substituted another name.—Annals, vol. i., p. 59. This is the first hint of the subsequent doctrine, "the courtesy of the Senate."

<sup>4</sup> The number of removals, as taken from the House Documents, 26th Congress, 1st session, No. 132, is as follows:

In 1792 . . . . .	2		In 1795 . . . . .	5
" 1794 . . . . .	2		" 1797 . . . . .	1—10

The *Richmond Whig* gives the list (Niles, 43, 8):

In 1792 . . . . .	1		In 1796 . . . . .	1
" 1793 . . . . .	3		" 1797 . . . . .	1—9
" 1795 . . . . .	3			

The Annual Register, 1829-30, p. 18, gives the number as nine, one being a

of the subject during his eight years of service is uneventful. To the motives which guided his choice, even his enemies could take no exceptions, and his most worthy successors have never been able to improve upon his rules. Contemporaneous and subsequent writings all bear witness to his success in carrying out the principles laid down when he entered office.<sup>1</sup>

The administration of Mr. Adams was destined to be a stormy one, and his policy in appointing to office played its part in the general dissatisfaction. His dislike of all interference on the part of either Senate or cabinet was well known,<sup>2</sup> while men who were jealous of their own prerogatives would not yield them even in the slightest degree without complaint. Washington, it is true, had filled many

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defaulter. Mr. Grundy, in his speech on Foot's resolution, March 1, 1830, *Gales and Seaton's Register*, vol. vi., p. 215, makes the following list :

1. E. Cross, Collector for the port of Newburyport.
2. Surveyor of the port of Plymouth.
3. Mr. Carmichael—foreign minister—recalled.
4. Collector of Yorktown.
5. Collector in Maryland.
6. Collector in New Jersey.
7. Collector in South Carolina.
8. Inspector of Revenue in New Jersey.
9. Inspector of Revenue in South Carolina.

If we include in this list the recall of Mr. Pinckney, the number tallies with that given in the House documents. Mr. Grundy's facts are of interest as showing that the probable cause for the removal of all but the two foreign ministers was mismanagement or appropriation of the public money.

<sup>1</sup> At a later period—in 1821—we find an incident recorded which is a fair illustration of the many that were current. A warm personal friend of Washington's applied for a lucrative office, and no one doubted but that he would receive it. A political enemy of the President's also applied for the same position, and all interested were amazed at his presumption, yet he received the appointment. Washington said to a friend who remonstrated : " My friend I receive with cordial welcome ; he is welcome to my house and welcome to my heart, but, with all his good qualities, he is not a man of business. His opponent is, with all his politics so hostile to me, a man of business ; my private feelings have nothing to do in this case. I am not George Washington, but President of the United States. As George Washington, I would do this man any kindness in my power ; as President of the United States, I can do nothing." —*Niles*, vol. xx., p. 249.

<sup>2</sup> His private letters and public papers all give evidence of this feeling. See references pp. 13, 17, notes.

important offices without consulting his cabinet,<sup>1</sup> but his appointments were so just, and all parties so united in him, that his course not only met with no opposition, but was even approved as indicating that he was superior to partisan influence. Mr. Adams, however, had been a party candidate, and the failure or success of his administration meant the failure or success of the Federalist party. His course, therefore, was subjected to the closest scrutiny. The first open opposition was in connection with his conferring positions upon relatives.<sup>2</sup> Different presidents have followed different plans in this regard, but the sentiment was then, as it has been since, strongly against such appointments. Whoever chooses to violate the unwritten law, lays himself open to censure, and exposes the candidate to undue criticism.

The greatest dissatisfaction came, however, in 1799, with the nomination of Mr. Murray as Minister to France. In spite of the extremely critical situation of affairs between the two countries, Mr. Adams took the entire responsibility upon himself, and sent the nomination to the Senate without consulting his cabinet and in defiance of public opinion.<sup>3</sup> Before acting upon it, the Senate took the unusual course of attempting to persuade the President to withdraw the nomination. Failing in this, a compromise was effected by which a commission was formed by adding two other names, and

<sup>1</sup> Hildreth, v., p. 242.

<sup>2</sup> The opposition had been specially strong to the nomination of his son-in-law, Col. Wm. S. Smith, whose name he had sent to the Senate for the office of Adjutant-General. It was the remembrance of his rejection which probably called forth from Mr. Adams the bitter remark : " You know it is impossible for me to appoint my own relations to any thing without drawing forth a torrent of obloquy."—Works, viii., p. 636. Mr. Adams was undoubtedly influenced by honorable motives in all such nominations, believing that justice should be done to the individual as well as to the public. He wrote to Hamilton regarding a later appointment of Col. Smith, and after recounting his services during the war, says : " I see no reason or justice in excluding him from all service, while his comrades are all ambassadors or generals, merely because he married my daughter."—Works, ix., p. 63. On the other hand, at an earlier period, when Col. Smith was involved in some difficulty, he wrote him a short and cutting letter in which he says : " I will not interfere with the discipline and order of the army because you are my son-in-law."—Works, viii., p. 652.

<sup>3</sup> Hamilton's Works, vol. vii., pp. 706, 707.

the three were confirmed only to avert the downfall of the Federalist party. It is necessary to bear this in mind, as it is one of the main causes of the dissensions which soon broke out in the cabinet and led to still further criticism on the President's use of his power.

When Mr. Adams entered upon the duties of his office, it is known that one, and inferred that all, of Washington's cabinet tendered their resignations to the incoming President.<sup>1</sup> These resignations were not accepted, and hence Mr. Adams had no reason to complain of the "legacy" left him by Washington.<sup>2</sup> His impatience of all restraint and his fear that he would not receive full credit for his independence of action, together with his jealousy of Washington's personal popularity, and a desire to show the superiority of his own course<sup>3</sup> led him from the first to neglect the counsel of his nominal advisers. His course in regard to the nomination of Mr. Murray added fuel to the flames. His difficulties with his cabinet increased, until on the 10th of May, 1800, he requested the resignations of Mr. McHenry, the Secretary of War, and of Mr. Pickering, the Secretary of State, and on the refusal of the latter to comply with the request, he summarily removed him. It is true Mr. Adams had a perfect right to remove obnoxious officers, that it would have been advisable for him to do so long before he did, that Mr. Pickering should have resigned without waiting for a dismissal, yet the President has always been subject to criticism for the manner in which it was done, and for choosing the particular time that he did for the removal. The causes alleged were "certain reasons of state" and Mr. Pickering's unfitness by nature and education to perform the duties of his office. But as Mr. Pickering had been his Secretary for more than three years, and had been promoted through various grades of office by Washington without complaint having been made as to his qualifications, this could not have been of as much weight as the "state reasons" hinted at. These

<sup>1</sup> Hildreth, v., p. 45. Gibbs, ii., p. 213.

<sup>2</sup> Gibbs, ii., pp. 348-354.

<sup>3</sup> "Washington appointed a multitude of Democrats and Jacobins of the deepest dye. I have been more cautious in this respect."—Works, ix., p. 86.

probably depended on the fact that by the loss of the New York State election, Mr. Adams' hopes for reëlection would have to be abandoned unless he could gain favor with the South. The two Secretaries had been specially unpopular in that section on account of their intimacy with Hamilton, and Mr. Adams evidently hoped by sacrificing them to gain strength there.<sup>1</sup> Without in any way compromising his honor by making a direct bargain with the leaders of the South, he incurred the suspicion of using his power of removal for political ends, and the act has been specially criticised on that ground.<sup>2</sup>

The last appointments of Mr. Adams, while upheld by his own party, provoked the most hostile feeling on the part of his opponents. Three weeks before his term of office expired, and after the result of the election was known, the Federalists passed an act providing for the appointment of sixteen new circuit judges and other inferior officers.<sup>3</sup> The President filled the offices with unseemly haste, regardless of the fact that he was choosing assistants for his successor and not for himself. These appointments and others, "crowded

<sup>1</sup> J. C. Hamilton says that the news of the New York election was received May 9th, and the following day the Secretaries were asked to resign.—"Hist. of the Rep." vii., 386.

<sup>2</sup> A full discussion of the subject is found in the Cunningham correspondence, Letters xii., xiv., xvii., xxiv.; Pickering's Review of the Cunningham Correspondence, pp. 63-110; Hamilton's Works, vol. vii., pp. 687-727, and in various letters of Hamilton; Gibbs, ii., pp. 346-359; Schouler, vol. i., pp. 466, 467; Hildreth, v., pp. 324, 325, 370-373; Works of John Adams, vol. i., pp. 566-569, ix., pp. 50-56, x., pp. 4-9; also in Upham's Life of Pickering, and Lodge's Life of Cabot. A number of years after the event, Mr. Pickering published, in his Review of the Cunningham Correspondence, what he considered a true statement of the facts. He charges that after the defeat of the Federalists in New York, Mr. Adams approached some of the leading members of the opposition to know on what terms they would support him in the coming election. They named the removal of the Secretaries as the price of their services, and their dismissal soon took place. These disclosures were made to Mr. Pickering so long after the event took place that the memory of the gentlemen making them may have proved treacherous, and as no evidence, written at the time, was produced to substantiate their testimony, we can not place too great reliance upon the statements made. Mr. Adams utterly denies that any such bargain was made.—Works, vol. x., pp. 4-9.

<sup>3</sup> Hildreth, v., p. 401; Schouler, i., p. 492.

in," as Jefferson says, "with whip and spur from the twelfth of December, when the result of the election was known, until nine o'clock of the night of March the third,"<sup>1</sup> could but alienate him and his party still more from his political opponents. The act, important and necessary in itself, had met with but little opposition, and but for Mr. Adams' ill-timed policy, would probably have remained in force. As the term of most of these offices, thus filled by Mr. Adams with men who were specially opposed to Mr. Jefferson, was for life or would extend beyond Mr. Jefferson's administration, the only recourse of the Anti-Federalists was to repeal the act. This was soon done, and as a consequence the judiciary was for many years in a crippled condition.<sup>2</sup> The appointments had been made to compass party ends, but they served only to strengthen the opposition.<sup>3</sup>

The executive patronage at this time was small, yet these events show how jealously the course of the Executive was watched, and how much discussion was caused by the slightest temptation to abuse it. Few removals were made,<sup>4</sup> al-

<sup>1</sup> Jefferson's Works, vol. iv., p. 386.

<sup>2</sup> Hildreth, v., p. 401. Mr. Adams evidently believed that by filling these offices with distinguished Federalists he had secured the safety of the country in at least one branch of the government; yet he laid himself open to the suspicion that wounded pride and disappointed ambition had dictated his acts.

<sup>3</sup> A description of the "midnight appointments" is given in the Domestic Life of Jefferson, pp. 307, 308.

<sup>4</sup> The Annual Register, 1829-30, p. 18, states the number as ten—one a defaulter.

Senator Holmes in his speech of April 28, 1830,—Gales and Seaton, vol. vi., p. 385,—gives the number as eleven, and says that four of Mr. Adams' appointments upon removals were annulled by Mr. Jefferson, and three of the four removed were restored.

The *Richmond Whig*—Niles, 53, 8—gives:

In 1797 . . . . .	5		In 1799 . . . . .	1
" 1798 . . . . .	2		" 1800 . . . . .	2—10

In the House Documents, 26th Con., 1st. sess., No. 132, the number removed is given:

In 1797 . . . . .	3		In 1799 . . . . .	2
" 1798 . . . . .	1		" 1800 . . . . .	2—8

Failure to renominate at expiration of term:

In 1798 . . . . .	1		In 1799 . . . . .	2—3
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Mr. Grundy—Gales and Seaton, vol. vi., p. 215—has the most complete list:

1. Collector of New York.                    2. Collector in Charleston.

though more than during the administration of Washington, yet these few did not escape sharp criticism.

Mr. Adams sincerely endeavored to be impartial in his conduct,<sup>1</sup> yet he did not escape censure in his appointment of Mr. Murray, the removal of Mr. Pickering, and the "mid-night appointments." No legislative or judicial decisions affected the question during his administration.

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|--|------------------------------------|
| 3. Consul at Bordeaux.                     | 6. Surveyor in Virginia.           |
| 4. Supervisor of Revenue in New Hampshire. | 7. Collector of Perth Amboy, N. J. |
| 5. Inspector of Revenue in Virginia.       | 8. Inspector at Perth Amboy, N. J. |
| 9. Mr. Pickering.                          |                                    |

One case of removal was that of Tench Coxe. Hildreth, vol. v., p. 379, says he was "a mousing politician," and a "temporizing busybody"; that he was dismissed, shortly after Mr. Adams' accession, from the office of Supervisor of the Revenue—for gross misbehavior, the Secretary of the Treasury said; for his political principles, Coxe said; but, in fact, for carrying stories about the Treasury to the *Aurora*, where they were detailed with great exaggeration. Mr. Holmes, in the speech above quoted, says that the removal of Coxe produced great excitement everywhere; even Virginia, where political opinion was no test for office, refused, on party grounds, to elect a certain Speaker, in order to show her resentment.

<sup>1</sup> He wrote, October 4, 1800: "Neither Mr. P. nor any other person ever had authority from me to say that any man's political creed would be an insuperable bar to promotion. No such rule has ever been adopted. Political principles and discretion will always be considered with all other qualifications, and well weighed in all appointments; but no such monopolizing and contracted and illiberal system as that alleged to have been expressed by Mr. P. was ever adopted by me. . . . There is danger of proscribing, under imputations of democracy, some of the ablest, most influential, and best characters in the Union."—Works of J. Adams, ix., p. 86.

## IV.

### THE APPOINTING POWER UNDER STATESMEN.

#### II.—THE REPUBLICANS.

THE reaction in 1801 in favor of the Anti-Federalists had caused both parties to wonder what would be the policy of the new administration concerning appointments. For twelve years the Federalists had been in power, and most of the offices in the gift of the Executive were in the hands of that party,<sup>1</sup> so that on this point the strength of the Constitution had not as yet been fairly tested. The policy pursued by Washington in his cabinet appointments and its disastrous result had taught a lesson that future Presidents could not overlook. Many believed and openly maintained that the same principle applied to subordinate officers. Some of Mr. Jefferson's immediate political friends urged him to make use of his power, and to institute a thorough change in the government officials. Nor was precedent lacking for such a course. In 1799, in the Pennsylvania State elections, the Republican candidate, Judge McKean, had been chosen governor. His first acts were to punish his enemies and reward his friends by turning out of office all who had opposed his election, and conferring the places thus vacated upon his

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<sup>1</sup> Benton says that Jefferson, when elected, found himself almost the only man of his party in office ("Thirty Years' View," vol. i., p. 161), but the reason was not, as he would have us infer, and as Jefferson charges, that Republicans had been purposely excluded from office. When Washington became President, party lines were not definitely drawn, so that offices could not have been conferred for political reasons. Mr. Adams removed only a few, and officers naturally became the supporters of the party in power. There had been no reason before the accession of Mr. Jefferson to bring up the question of party in connection with appointments.

warmest supporters.<sup>1</sup> He was now most zealous in recommending such a course to Jefferson.<sup>2</sup>

In the spring of 1800 the Republicans gained the State election in New York. According to the Constitution,<sup>3</sup> the governor was a fifth member in the Council of Appointment, and the three Republican members immediately followed out Governor McKean's plan of proscription. The Republican ranks were divided into two opposing factions, and those belonging to the weaker one were excluded from office not less conscientiously than the Federalists themselves.<sup>4</sup> With these notorious instances fresh in mind, the Federalists, in the disputed election between Jefferson and Burr, had been determined not to support the former without some distinct assurance that a similar plan would not be followed in the United States offices. Mr. Bayard, of Delaware, accordingly named to a friend of Mr. Jefferson's three conditions on which they would transfer their support from Mr. Burr to Mr. Jefferson. One of these was that subordinate public officers, employed only in the execution of details established by law, should not be removed from office on account of their political belief, nor without complaint against their conduct. This condition did not apply to higher officers, as those of the cabinet, foreign ministers, etc., which they considered it not only reasonable but neces-

<sup>1</sup> He pursued the same policy in 1805, when reelected by the combined votes of the Constitutionalists and the Federalists. The Republicans were now removed from office, and the Federalists rewarded for their aid by making one of their judges Chief-Justice of the State (Hildreth, v., p. 591). We are accustomed to refer to a later period the origin of the "spoils" doctrine. The credit of its introduction belongs, however, to Governor McKean, of Pennsylvania, ably seconded by the New York Council of Appointment.

<sup>2</sup> Hildreth, v., p. 426.

<sup>3</sup> New York was divided into four great districts. The Assembly selected one senator from each of these districts, and this formed the Council of Appointment. The governor acted as president, and had the casting vote, but no other voice. With the advice and consent of this council he was to appoint officers.—Constitution of 1777, Article 23. By an amendment of Oct., 1801, "the right to nominate all officers is vested concurrently in the person administering the government of this State for the time being and in each of the members of the Council of Appointment."—Poore's "Charters and Constitutions," vol. ii., p. 1335.

<sup>4</sup> Hildreth, v., p. 424; Jenkins, "Political Parties," pp. 84-89.

sary should be men of Mr. Jefferson's own choice ; but to such inferior officers as postmasters, collectors of the revenue, etc. These terms were conveyed by a friend to Mr. Jefferson, who authorized him to say that these views corresponded with his own, that meritorious subordinate officers ought not to be removed merely on account of their political opinions, and that they might rely on him accordingly. Trusting in these statements, the opposition of Delaware, Maryland, and Virginia was withdrawn, and Jefferson was elected.<sup>1</sup>

He entered upon his duties, therefore, committed to the policy of non-removal for political opinions, by his assurances to Mr. Bayard, by his reiterated statements in his letters that those who had done well had nothing to fear, and those who had done ill nothing to hope,<sup>2</sup> and by the words of his inaugural favoring political toleration.<sup>3</sup> In addition, some of Mr. Jefferson's personal characteristics led him to adopt a more conciliatory policy than was urged upon him by his Pennsylvania and New York adherents. His confidence in himself and in his supporters led him to believe that these would not be alienated by refusing them office, while his opponents could be won by retaining them in their positions.<sup>4</sup> Thus, while denying high positions to his chief opposers, he refused to introduce a general proscriptive policy.<sup>5</sup>

He had been but a short time in office before he formulated his ideas on appointments and removals as follows :

<sup>1</sup> American Statesman, p. 193 ; Hildreth, v., p. 407 ; Randall, ii., pp. 606-622. <sup>2</sup> Jefferson's Works, vol. iv., pp. 353, 359.

<sup>3</sup> "We have yet gained little, if we countenance a political intolerance as wicked, as despotic, as religious intolerance."—Works, viii., p. 2.

<sup>4</sup> He seemed to expect the "era of good feeling" during his presidency. He expressed the hope, Feb. 14, 1801, that all distinction between Federalist and Republican would soon be lost, or at most that it would be only between Republican and Monarchist.—Works, iv., p. 353.

<sup>5</sup> What seems to be the best index to his policy is found in a letter to Mr. Monroe, written March 7, 1801 : "I have firmly refused to follow the counsels of those who have desired the giving offices to some of their leaders in order to reconcile. I have given, and will give, only to Republicans under existing circumstances. But I believe, with others, that deprivations of office, if made on the ground of political principles alone, would revolt our new converts and give a body to leaders who now stand alone. Some, I know, must be made. They must be as few as possible, done gradually, and bottomed on some malversation or inherent disqualification."—Works, iv., p. 368.

1. Relatives should not receive office.<sup>1</sup>
2. Late appointments of Mr. Adams should be null.<sup>2</sup>
3. Officers guilty of *official* mal-conduct should be removed.
4. Good men, whose only fault was difference in political opinions, should not be removed, except attorneys and marshals.<sup>3</sup>
5. Removals should be made for electioneering activity, or open and violent opposition to the government.<sup>4</sup>

In examining Mr. Jefferson's course, in view of these expressed principles, there is no evidence to show that he ever violated the first and gave office to relatives. The late appointments of Mr. Adams, he said he did not consider even candidates for nomination.<sup>5</sup> In most cases, however, where commissions had been made out, he issued new commissions for those persons confirmed by the Senate, but some exceptions were made. Among these were several justices of the peace nominated under the District of Colum-

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<sup>1</sup> "Mr. Adams degraded himself infinitely on the subject, as General Washington had done himself the greatest honor. With two such examples to proceed by, I should be doubly inexcusable to err. The public will never be made to believe that the appointment of a relative is made on the ground of merit alone, uninfluenced by family views."—March 27, 1801, vol. iv., p. 388. "My constituents may be satisfied . . . that the field of public office will not be perverted by me into a family property."—Vol. v., p. 90. Jan. 20, 1810, he wrote: "I laid it down as a law of conduct for myself, never to give an appointment to a relative."—Vol. v., p. 498.

<sup>2</sup> Mr. Jefferson never forgave Mr. Adams for what he considered a gross affront in his "midnight appointments."—Letter to Dr. Rush, March 24, 1801, vol. iv., p. 383. He wrote to Mrs. Adams, June 13, 1804: "I did consider his last appointments to office as personally unkind. They were from among my most ardent political enemies, from whom no faithful cooperation could ever be expected, and laid me under the embarrassment of acting through men whose views were to defeat mine, or to encounter the odium of putting others in their places. It seems but common justice to leave a successor free to act by instruments of his own choice."—Works, vol. iv., p. 546.

<sup>3</sup> Works, vol. iv., pp. 380, 451. His reason for making an exception in favor of attorneys and marshals was that the courts being Federal and irremovable, he attorneys and marshals should be Republican to counterbalance that influence.

<sup>4</sup> He learned this from later experience.—Letter of Oct. 25, 1802, vol. iv., p. 451. Letter to Gallatin, May 30, 1804, vol. iv., pp. 543, 544.

<sup>5</sup> Works, vol. iv., pp. 383, 386.

bia act. Between forty and fifty had been nominated by Mr. Adams on the 2d of March. Mr. Jefferson reduced the number to thirty, and of these he commissioned twenty-five of Mr. Adams' nominees and added five of his own.<sup>1</sup>

Under the head of official mal-conduct was included the case of the Marshal of Philadelphia, who was accused of packing juries<sup>2</sup>; and also several other marshals and attorneys in districts where there was complaint of a too vigorous enforcement of the alien and sedition laws. Six defaulters were also removed.<sup>3</sup> In all these cases he expresses the fear that the removals, though made on account of reasons for which Mr. Adams should have removed the same persons, will be ascribed to party ends.<sup>4</sup>

His early promise to make no removals for political purposes was not so strictly observed. The instance which excited the most unfavorable comment was the removal of Mr. Goodrich, who, shortly before Mr. Adams' retirement, had been appointed Collector of the Port of New Haven, to fill a vacancy caused by death. He was deprived of his office by Mr. Jefferson, and the position nominally given to Mr. Bishop, a man advanced in years and with impaired eyesight, but virtually intended for his son, whose college effusions in praise of Mr. Jefferson had found their way into the press and been used as campaign documents.<sup>5</sup> The merchants of the city sent in a vigorous remonstrance, complaining, not because the person appointed was a Republican, but because less competent than his predecessor to perform the duties of his office. The President sent a lengthy reply, which he intended not only as a vindication of his course in this particular case, but as an explanation to such of his particular friends as had urged him to remove all Federal officers. He justified himself on the ground that all offices had been held by the Federalists, who were now in the minority, and that it was but just that the party in power should have a proportionate share in the direction of public

<sup>1</sup> Schouler, vol. ii., p. 8.      <sup>2</sup> Works, vol. iv., p. 386. Schouler, ii., p. 5.

<sup>3</sup> Gales and Seaton, vol. vi., part i., p. 387.      <sup>4</sup> Works, iv., p. 383.

<sup>5</sup> "Life of Cabot," p. 427. Schouler, ii., p. 9.

affairs. This equal share could be given them only by removing those in office, since vacancies caused by death were only occasional, and resignations never occurred. When affairs should thus be balanced he hopes "to return with joy to that state of things when the only questions concerning a candidate shall be: Is he honest? Is he capable? Is he faithful to the Constitution?"<sup>1</sup>

It was doubtless from these considerations that he yielded somewhat to the advice of Governor Clinton and Governor McKean and made a few local removals where political feeling was very strong.<sup>2</sup> After these early removals he expressed his intention of abiding by his first decision and relying upon deaths, resignations, and delinquencies to give the Republicans a fair participation in office.<sup>3</sup>

It is impossible to determine how many cases were included in removal for electioneering activity, but the number was probably small. The majority of office-holders would not allow their political zeal to get the better of their discretion, and so heeded the President's advice and "kept quiet," thus securing their political safety. Those unwise enough to do otherwise were removed, as Jefferson believed they could not conscientiously perform their duties while thwarting the general purpose of the government.<sup>4</sup>

Thirty-nine removals were made<sup>5</sup> by Mr. Jefferson. Some of these were in consequence of his policy of economizing expenses by doing away with various offices.<sup>6</sup> Just how

<sup>1</sup> Works, iv., pp. 402-405. Hildreth, v., pp. 429, 430.

<sup>2</sup> Schouler, ii., p. 9. He gives the number of such removals as about sixteen during the first fourteen months of the administration.

<sup>3</sup> Works, iv., p. 451; viii., p. 114 (Oct. 25, Nov. 15, 1802).

<sup>4</sup> He wrote, July 17, 1807, in speaking of those who were tempted to use the influence of their office against the government: "I have only requested they would be quiet, and they would be safe; that if their conscience urges them to take an active and zealous part in opposition, it also urge them to retire from a post which they could not conscientiously conduct with fidelity to the trust imposed in them, and on failure to retire I have removed them; that is to say, those who maintained an active and zealous opposition to the government."—Works, vol. v., p. 139.

<sup>5</sup> Annual Register, 1829-30, p. 18. The *Richmond Whig* gives, 1802, 22; 1803, 27.

<sup>6</sup> This was especially the case in the foreign service. Mr. Murray was re-

many were not included in his four rules it is impossible to determine.<sup>1</sup> His friends complained because so few removals were made; his enemies because there were so many. The entire number was four times as great as that made during the first forty years of the government by any other Executive, and hence some have ascribed to him the introduction of the "spoils" doctrine.<sup>2</sup> The charge, however, all things considered, seems to be without foundation. The circumstances attending the "midnight appointments" and the decrease in the number of offices were causes which explain a large number of these removals. The bitterness of party feeling doubtless caused other removals to be attributed to political motives, though in reality they were made for official misconduct. The spoils system was in full operation in the States,<sup>3</sup> but so far from originating it or even intentionally adopting it, Jefferson resisted the entreaties of his associates who sought to press it upon him. His election was brought about by a change in political sentiment, and while Republicans had not been "systematically excluded" from office, it was a fact that Federalists filled a majority of the positions. That his course in regard to appointments and removals was as lenient as it was, is a cause for surprise; that he made some unnecessary removals should not brand

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called from Holland, Mr. Smith from Portugal, and Mr. Adams from Prussia, and successors were not appointed.

Hildreth, vol. v., p. 428. Mr. Humphreys was recalled from Spain on account of long absence from the United States, and Mr. Charles Pinckney appointed in his stead. This was owing to his belief that it was unwise for the government to keep its servants long from home.

<sup>1</sup> Hildreth mentions the cases of Aquila Giles, Marshal of the East District of New York; Joshua Sands, Collector of New York; James Watson, Navy Agent; Nicholas Fish, Supervisor of New York Internal Revenue; Henry Miller, Supervisor for Pennsylvania,—all of them officers in the Revolution, yet removed for political reasons, and their places given to partisans of Jefferson, in one case to an old Tory.—Vol. v., pp. 428, 431.

<sup>2</sup> George F. Hoar says of this administration and the spoils doctrine: "The evil seed had been sown, was sprouted, and the tree was rooted and well grown more than a quarter of a century before the accession of Andrew Jackson."—*N. A. Rev.*, vol. cxxxii., p. 469. Stickney says that Jefferson began and Van Buren established in all its fulness the spoils system.—"A True Republic," p. 73; "Life of Cabot," p. 427.

<sup>3</sup> See p. 34.

his administration as the source of all later corruption. Credit should be given him for resisting the strong temptation brought to bear upon him from all sides to use the government patronage for party purposes.<sup>1</sup>

Three proposed legislative measures came up during his administration, and one important judicial decision was rendered. The first measure proposed in Congress was an amendment to the Constitution, offered by John Randolph,<sup>2</sup> which provided for the removal of all judges of the United States Courts by the President, on the joint address of both Houses of Congress. Its occasion was the impeachment of Judge Chase—a mode of removal which Mr. Randolph considered too long, and uncertain as to its results. After considerable desultory debate, the question was postponed without coming to a final vote.

Two other amendments were proposed by Mr. Hillhouse, in 1808.<sup>3</sup> They were parts of a series of seven, the object of all being to limit the executive power. He provided that appointments should be made by the President, with the advice of both Senate and House, and that removals should take place only after the consent of the same bodies. He gave the House a share in the power on the ground that they represented the people more perfectly than either Executive or Senate, and would, therefore, have a better knowledge of applications made. The President was given power of temporary suspension and appointment. The resolutions were never acted upon, but they are an index of a desire, very prevalent at that early day, to reduce to a minimum the authority of the Executive.<sup>4</sup>

Shortly before the close of the administration, Mr.

<sup>1</sup> Several cases are mentioned where Mr. Jefferson failed to favor his personal friends as others might have done. Thomas Paine had desired a public mission, but though the President aided him in private, he refused to give him office. Callender, one of his adherents, had been imprisoned for libel, but though Jefferson remitted his fine, he refused to appoint him postmaster of Richmond, and so gained an enemy.—Hildreth, v., p. 454. Schouler, ii., p. 9.

<sup>2</sup> Annals of Congress, 9th Congress, 1st session, pp. 499–507.

<sup>3</sup> Annals, 10th Congress, 1st session, vol. i., pp. 332–358.

<sup>4</sup> Mr. Adams' comments on these proposed amendments are long and full of interest.—Works, vol. vi., p. 525, *et seq.*

Quincy brought before the House a resolution,<sup>1</sup> having in view the impeachment of Mr. Jefferson for his conduct in regard to the Boston collectorship. He charged that General Lincoln had been retained in that office two years after he had become physically incapacitated to perform its duties, and after he had urged the President to accept his resignation; that the resignation had not been accepted, as the President wished to confer the position, at the close of the administration, upon Mr. Dearborn, the Secretary of War; that thereby the business interests of the city and State had been seriously endangered. This Mr. Quincy considered a high misdemeanor, warranting Mr. Jefferson's impeachment, but after an elaborate speech, his own vote was the only one in favor of the measure.

The question of removals came up before the Supreme Court in the case of *Marbury vs. Madison*. Mr. Marbury had been appointed by Mr. Adams a Justice of the Peace in the District of Columbia, his term of office to continue five years. It was a "midnight appointment," however, and his commission, though signed, sealed, and deposited in the Department of State, had not come into his own hands. Mr. Jefferson withheld it, and suit was brought to compel its delivery. The case did not properly come within the jurisdiction of the court, but the question was fully treated, and the opinion was expressed that, "when a commission has been signed by the President, the appointment is final and complete. The officer appointed has then conferred upon him legal rights which cannot be resumed. Until that the discretion of the President may be exercised by him as to the appointment, but from that moment it is irrevocable. His power over the office is then terminated in all cases where, by law, the officer is not removable by him. The right to the office is then in the person appointed, and he has absolute, unconditional power of accepting or rejecting it. Neither a delivery of a commission, nor an actual acceptance of the office, is indispensable to make the appointment perfect." This conclusion was supported by exhaustive ar-

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<sup>1</sup> *Annals, 10th Congress, 1st session, pp. 1173-1183.*

gements, and the opinion closed with the statement: "Mr. Marbury, then, since his commission was signed by the President, and sealed by the Secretary of State, was appointed; and as the law creating the office gave the officer a right to hold for five years independent of the Executive, the appointment was not revokable, but vested in the officer legal rights, which are protected by the laws of his country. To withhold his commission, therefore, is an act, deemed by the Court not warranted by law, but violative of a vested legal right."<sup>1</sup> It was also said by the Court, that "when a person nominated to office refuses to accept that office, the successor is nominated in place of the person who has declined to accept, and not in place of the person who had been previously in office and had created the original vacancy." A removal, therefore, is complete as soon as a new appointment is made.

The prominent part which Mr. Madison took in the formation of the Constitution had rendered his views on appointments familiar to all.<sup>2</sup> Not having come into office through

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<sup>1</sup> The summary of the arguments is given in Story, ii., pp. 356-363. He says, in regard to the case: "The reasoning of this opinion would seem to be, in a judicial view, absolutely irresistible, and as such received at the time a very general approbation from the profession. It was, however, totally disregarded by Mr. Jefferson, who on this, as on other occasions, placed his right of construing the Constitution and laws as wholly above and independent of judicial decision." Mr. Van Buren maintains that the decision was unfair and partisan.—"Political Parties in the U. S.," pp. 280-302.

<sup>2</sup> That his views on the relation which the Senate should bear to appointments never changed, we may judge, from a letter written March 24, 1834: "The augmentation of the senatorial patronage . . . would be felt deeply in the general administration of the government. The innovation, however modified, would more than double the danger of throwing the Executive machinery out of gear, and thus arresting the march of the government altogether. . . . Should the controversy on removals end in the establishment of a share in the power as claimed for the Senate, it would materially vary the relations among the component parts of the government, and disturb the operation of the checks and balances as now understood to exist."—Works of Madison, vol. iv., pp. 342-343. The same thought, in nearly the same words, is found in his letter of August 29, 1834, vol. iv., p. 355; and of October 15, 1834, iv., p. 366. In a letter to Charles Francis Adams, October 13, 1835, he says: "I must still think . . . that the Constitution is best interpreted by reference to the tripartite theory of government." Works, vol. iv., p. 385.

a political revolution, no demand was made for a general change in subordinate officers. Nor would such a change be likely to be made by one who had insisted so strongly that the removal of a meritorious officer would be sufficient cause for impeachment.<sup>1</sup>

The majority of his predecessor's cabinet were retained, the place which he left vacant being filled by Mr. Smith, of Maryland.<sup>2</sup> While not believing that locality should be given too great prominence in selection,<sup>3</sup> he still faithfully carried out the principle advocated by Washington, that the executive department, as well as the legislative, should be largely representative.<sup>4</sup> The important questions of state during his term of office did not leave him time to give special attention to the choice of inferior officers, nor did his inclination lead him so to do.<sup>5</sup>

Party spirit ran high during the greater part of his term, yet but five removals were made, three of them being defaulters.<sup>6</sup> The dismissal of the Postmaster-General, Gideon Granger, caused considerable remark in official circles. Con-

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He adds, in the letter to Mr. Adams, that the mode of appointing to and removing from office should be fixed by the Constitution. The growth of the country, and an unforeseen increase in the number of offices, "may add weight to the Executive scale, disturbing the equilibrium of the Government."—Vol. iv., p. 385.

<sup>1</sup> Annals, 1st Congress, 1st session, p. 498.

<sup>2</sup> Hildreth says that this appointment was probably made to conciliate his brother, Senator Smith, who was one of the most influential opposers of Mr. Madison's nomination.—Vol. vi., p. 150. Schouler probably refers to the same thing when he says that Madison was conciliatory in policy and made some weak appointments.—Vol. ii., p. 280. Of his nominations as a whole, Gov. McKean writes to John Adams: "Mr. Madison has paid too great a deference to the recommendations to office by low and designing men, who stood very much in need of recommendation themselves, though excellent Democrats, if they were to be credited."—Works, John Adams, x., pp. 61, 62.

<sup>3</sup> He wrote to Monroe, April 23, 1824: "I think you are perfectly right in not allowing *locality* to give exclusive claims to offices of *general concern*."—Works, iii., p. 433. <sup>4</sup> Nine States were represented in the cabinet at different times.

<sup>5</sup> He excused himself from trying to secure a position for a friend, saying: "It is the usage to leave to heads of departments the selection of their own clerks; they generally have their preferences, often founded in relations, friendship, and personal confidence. My connection with such appointments is much less than may be supposed."—Works, iii., p. 26.

<sup>6</sup> Annual Register, 1829-30, p. 18.

trary to the wishes of the President, he had appointed to the important position of Postmaster of Philadelphia, Dr. Lieb, a person who had long been openly opposed to Mr. Madison. The President could but regard it as an act of hostility to himself, and, having long suspected his friendship, he dismissed him.<sup>1</sup> As he had not been removed for delinquency, his friends protested, and a resolution was introduced into the Senate asking the reason for his dismissal. It was rejected on the ground that the Senate had not the right to make such an inquiry. It is the only instance in the early history of the government of an attempt to question the motives of the President in regard to removal.

Mr. Madison met with opposition from the Senate in one other instance. In May, 1813, during the recess of Congress, he appointed as Minister to Russia, the Secretary of the Treasury, Mr. Gallatin. The latter did not desire to resign the secretaryship, but having performed the duties of the office for twelve years, the mission was regarded as a merited rest. Two weeks after he sailed Congress met, and, learning that Mr. Gallatin still held the office of Secretary, his nomination as minister was rejected by a single vote.<sup>2</sup>

The most important legislative action came up in 1810 concerning the appointment of members of Congress to office. The old opposition to the practice had never died out, and though in the general government it had never been carried to an alarming extent, Mr. Macon, of North Carolina,<sup>3</sup> now proposed an amendment to the Constitution providing that no senator or representative, after taking his seat, should be eligible to any United States civil office until after the expiration of the presidential term during which he had

<sup>1</sup> Hildreth, vi., 458.

<sup>2</sup> Adams' "Life of Gallatin," p. 480; Hildreth, vi., pp. 401, 414, 415; Schouler, ii., pp. 377-381. During the administration of Washington, Chief-Justice Jay had been confirmed as foreign minister, and during Adams' administration, Chief-Justice Ellsworth had held a similar position. Mr. Madison, therefore, had not hesitated to send Mr. Gallatin abroad, while allowing him to retain the secretaryship. Also, Annals, 13th Cong., vol. i., p. 84.

<sup>3</sup> This State seems always to have been specially averse to conferring office on members of Congress, probably owing to the opposite practice in the State government.—Elliot, v., 423.

served in Congress.<sup>1</sup> The arguments advanced were similar to those used when the same subject was before the convention.<sup>2</sup> Mr. Quincy, however, carried the matter still farther by moving as an amendment: "And that no person standing to any senator or representative in the relation of father, brother, or son, by blood or marriage, shall be appointed to any civil office under the United States, or shall receive any place, agency, contract, or emolument from or under any department or officer thereof."<sup>3</sup> He supported his amendment by a speech which Mr. Adams characterized as worthy of Juvenal or Swift.<sup>4</sup> But, though receiving a considerable majority, it was lost, as it lacked the necessary two-thirds vote. Mr. Macon's original proposition was lost by a vote of sixty-one against fifty-nine in favor of it.

"The era of good feeling" inaugurated by President Monroe, afforded no opportunity for change of office, nor does his course in any way seem to have provoked special criticism.<sup>5</sup> But little can be gathered as to his views of the way in which the power should be exercised. He was averse to the eligibility to office of members of Congress, but did not think it wise entirely to abandon the practice,<sup>6</sup> and there

<sup>1</sup> Annals, 11th Cong., 3d sess., pp. 454-905.

<sup>2</sup> The most pertinent remark was made by Mr. Sawyer, who said: "If a member is determined to be a knave, you cannot prevent him; he did not believe in depriving the government of the services of a respectable class of men with the hope of making knaves honest." The opposite side followed Mr. Quincy, who said: "He who has the office carries on his forehead the mark of having fulfilled the condition, and though his self-love may denominate his attainment of office to be the reward of merit, the world, which usually judges acutely on these matters, will denominate it the reward of service."

<sup>3</sup> Annals, 11th Cong., 3d sess.; "Life of Quincy," p. 219.

<sup>4</sup> Works of J. Adams, ix., pp. 633, 634.

<sup>5</sup> How much his course may have been influenced by his correspondence with General Jackson is perhaps an open question. The latter wrote to him, in 1816, before he himself had presidential aspirations: "In every selection, party and party feelings should be avoided. Now is the time to exterminate that monster called party spirit. . . . The chief magistrate of a great and powerful nation should never indulge in party feelings. . . . Consult no party in your choice." —Niles, vol. xxvi., pp. 164, 165.

<sup>6</sup> In 1818 he appointed Senator Campbell Minister to Russia, and said of his action, "that he did not approve the principle of appointing members of Congress to foreign missions, but as it had been established in practice from the

is evidence of his extreme regard for the spirit as well as the letter of the Constitution.<sup>1</sup> Like his predecessor, he did not wish his personal preference to have any weight in appointments made by the heads of departments.<sup>2</sup> He desired, as far as was consistent with his general policy,<sup>3</sup> to give office to Federalists.<sup>4</sup> Nine removals were made, and all for good cause.<sup>5</sup>

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first organization of the present government, and as members of Congress would not be satisfied with the opposite principle, he did not think it proper to make it a rule for himself."—"Memoirs of John Quincy Adams," iv., p. 72.

<sup>1</sup> The case of Alexander Smith is an illustration. He had voted while in the House for the establishment of a judicial district in Western Virginia, by which the office of judge was created. His term of office had expired, and he was proposed for the position. He was entirely qualified for it, Mr. Monroe was perfectly willing to give it to him, the letter of the Constitution permitted it. The spirit, however, did not, and Mr. Monroe refused to make the appointment.—"Thirty Years' View," i., p. 84.

<sup>2</sup> Mr. McLean, his Postmaster-General, relates at a subsequent time, that the President never in any way intimated a preference for a candidate when he placed several names before him. "The law has given you the right to make the appointment; I shall be satisfied with your decision." One special case is mentioned where strong claims of personal friendship might have led him to use his influence, but he refused to do so, and another person received the appointment.—Niles, vol. xliii., p. 8. Another very marked instance was in the appointment of the postmaster at Albany.—"Mem. J. Q. Adams," v., p. 481.

<sup>3</sup> His first object, he wrote, in reply to Gen. Jackson's letter, was to preserve the Republican party intact, and not disgust its members by too great liberality to the other party. His second object was to prevent the reorganization of the Federalist party.—Niles, vol. xxvi., pp., 165, 166.

<sup>4</sup> February 24, 1825, he expressed a regret that this had not been possible in a greater number of cases, yet felt that he had gone as far as he could without forfeiting the confidence of his own supporters.—"Mem. of John Quincy Adams," vi., p. 494.

<sup>5</sup> Two consuls were removed who had failed as merchants, and so forfeited their office; another became insane; one, at Glasgow, was engaged in a quarrel, and his removal was demanded by the British Government; another was recalled on account of the complaints of American citizens; one district-attorney in Florida was removed for abandoning his office and living in Maryland; another for illegal traffic in slaves. Charges were preferred against an Indian agent, and he was removed after evidence on both sides had been presented to the Attorney-General and he had reported the case to the President.—Annual Register, 1829-30, p. 18; Gales and Seaton, vol. vi., pt. i., p. 391.

Mr. Calhoun says that during the seven years that he was Secretary of War but two of his civil subordinates were removed. In both cases the charges were investigated in the presence of those accused, and they were not dismissed until

In Congress the eligibility of members was again discussed, and in 1820 an amendment to the Constitution was proposed by Mr. Cobb, of Georgia,<sup>1</sup> similar to the one offered by Mr. Macon, in 1810. The avowed object of the amendment was to secure the independence of the Legislature by removing temptation from them. Its real object was to curtail the authority of the Executive in some direction, and in this one there seemed to be a favorable opening.<sup>2</sup> No attempt was made to show that members of Congress when appointed to office had not performed their duties well, nor were examples of corruption brought forward.<sup>3</sup> The majority of the House believed that the evils were imaginary rather than real; that it was unjust to deprive the President of this means of finding men whom he knew to be well qualified for office; that it would not lessen the evil, as the President would be forced to rely upon members for information; that men who had left Congress and established themselves in business for a

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after a full hearing and the reasons for removal had been reduced to writing.—  
Calhoun's Works, ii., p. 439.

There seems to have been an impression that too few rather than too many removals were made. Niles, in 1821, instances a person who held an accounting office, but who had such an aversion to figures that he would suffer imposition rather than add up his washer-woman's bills. Every thing was entrusted to his clerk, who was unknown to the law and irresponsible to the public. The statement is made, but without special proof, that there were many hundred cases of the same nature.—Niles, vol. xx., p. 249.

<sup>1</sup> Annals, 16th Cong., 1st sess., vol. ii., p. 935.

<sup>2</sup> John Quincy Adams wrote Jan. 18, 1821, "About half the members of Congress are seekers for office at the nomination of the President. Of the remainder, at least one-half have some appointment or favor to ask for their relatives."—Memoirs., v., p. 238. That so few such appointments were made, compared with the number of applicants, would seem to show that the President did not require a constitutional amendment to keep him from conferring office upon them.

<sup>3</sup> An illustration of the fact that general charges on such a subject often grossly exaggerate the facts, is the statement of Mr. Cobb that he had personal knowledge of twelve senators who had been appointed to office during that administration and of about double that number of representatives, and then adds, "probably these do not constitute one-half." Six years later an official investigation made from public documents shows that the entire number of members of Congress receiving appointments from Mr. Monroe during their term of service, or within one year after its expiration, was thirty-five.—Niles, vol. xxxvi., p. 267.

few months would be unwilling to break in upon their private work and accept office;<sup>1</sup> and that since it presented a choice between having work satisfactorily done by well-known and eminent men and having it poorly done, that temptation might be kept from persons of weak moral character, the interests of the country would be sacrificed by such an amendment. The question was lost by a vote of seventy-two to eighty-seven, and though often since that time brought before Congress, it has never received special attention.

In May, 1820, Congress passed an important measure limiting the term of office of all persons employed in collecting the revenue to a period of four years.<sup>2</sup> It was hurried through without debate and was signed by the President on the last day of the session. The professed object of the bill was to bring up for inspection the accounts of all such officers at the end of every four years, and withhold reappointment from those who were found to be remiss. Its real object, according to John Quincy Adams, was to secure the election of Mr. Crawford in the next presidential campaign.<sup>3</sup> Mr. Monroe signed the bill without realizing its true character, but owing to his great care in all nominations, for several years it was productive of no special mischief.<sup>4</sup>

If there was ever an occasion which would justify punishing enemies and rewarding friends, it was when John Quincy Adams came to the presidential chair. His enemies had been many and their opposition most violent; some who

<sup>1</sup> That this was a reasonable objection was seen in the appointment a few years later of Mr. King as Minister to England. His term of office in the Senate had just expired, and he was on the point of leaving Washington to engage in private business when the position was tendered him. Had the appointment been made a year after he had left public life, there is every reason to believe he would not have accepted.—“Memoirs of J. Q. Adams,” vi., pp. 522, 523; Morse’s “Life of J. Q. Adams,” p. 178.

<sup>2</sup> Annals, 16th Cong., 1st sess., vol. ii., p. 2598.

<sup>3</sup> Memoirs, vii., p. 424.

<sup>4</sup> Mr. Madison doubted the constitutionality of the act. Works, iii., pp. 196, 200; vol. iv., p. 343; and Mr. Jefferson was specially bitter against it. Works, vii., p. 190. It was an unpopular measure with Clay, Calhoun, Adams, and other leading statesmen.

should have been his friends had given their allegiance to others; his supporters were principally from an opposite political party, and his election was owing to opposition to other candidates rather than to zeal in his personal behalf. As soon as the decision of the House was known, an active party was formed against him, opposed not to what had already been done, nor to principles that were to guide his administration, but organized with a desire to defeat at any cost his reëlection. A modern politician would have built up a strong constituency by placing his influential friends in the most important positions. These would have gathered a large following throughout the country in general, and by subserviency to the will of "the people," a fair share of the popular favor might have been gained. What course did Mr. Adams take? He appointed as Secretary of State the person best fitted to fill the place, regardless of the insinuations cast against his motives. The position of Secretary of the Treasury he offered to his most bitter opponent in the presidential race, and when he declined it, gave it to one who had voted against him. The Secretary of War had opposed him, while a rival had also been the choice of the Secretary of the Navy and of the Attorney-General. The most important diplomatic position was given to an old Federalist who had never been his friend.<sup>1</sup>

Requests for subordinate office were made at this time<sup>2</sup> as well as four years later, and a solicitor for the people's favor might have yielded to the demand and gratified the wishes of a portion of the applicants. But what patronage could be expected from one who, five years before, had written of a penniless beggar for place, "there is something so gross and so repugnant to my feelings in this cormorant appetite for office, this barefaced and repeated effort to get an old and meritorious public servant turned out of place by a bankrupt to get into it, that it needed all my

<sup>1</sup> Morse's Adams, p. 178. Sumner's Jackson, p. III. Gales and Seaton, vol. vi., pt. i., p. 391.

<sup>2</sup> The year before Mr. Adams' accession, there was a vacancy in the Fourth Auditorship of the Treasury. Among the army of applicants were five senators and forty-five members of the House. Cited by Niles from the *N. Y. American*, April 13, 1824.

sense of the allowances to be made for sharp want and the tenderness due to misfortune to suppress my indignation."<sup>1</sup>

While the result of the election was pending in the House, there was a large number of vacancies to be filled, especially in the Department of State. That there should be no occasion for suspicion that such appointments were made with reference to the election, Mr. Adams, as Secretary of State, urged the President to determine immediately upon all nominations, but not to make them public, until after the choice had been made in the House. The week before the President was chosen, he deposited with Mr. Monroe a record of his advice on all these nominations as a testimonial that he had not used such offices to promote any interests of his own. After the election, he urged the President to fill every vacancy, that no one might ever have occasion to call in question any motive of his own.<sup>2</sup>

Before the inauguration, efforts were made to induce him to take advantage of the four years' limitation law, and to introduce the principle of rotation in office by making different nominations.<sup>3</sup> On the 5th of March he sent four messages to the Senate with the renomination of every officer whose term was expiring, and wrote in his diary that night: "I determined to renominate every person against whom there was no complaint which would have warranted his removal."<sup>4</sup> And later he wrote of his policy in regard to the same act: "I have renominated every officer, friend or foe, against whom no specific charge of misconduct has been brought."<sup>5</sup>

<sup>1</sup> Memoirs, v., p. 24.

<sup>2</sup> Memoirs, vol. vi., pp. 477, 484, 488, 490, 491, 494, 508. Jan. 23–Feb. 11, 1825.

<sup>3</sup> Memoirs, vi., pp. 546, 547.

<sup>4</sup> Memoirs, vi., p. 520. The most pressure was brought to bear upon the nomination of Marshal for the District of Indiana. No complaint was made against the incumbent, but numerous recommendations were sent in for the appointment of a brother of one of the Indiana senators, and various other persons professed a willingness to serve their country in the same capacity. Mr. Adams, as may be inferred, made no change in the office.

<sup>5</sup> Memoirs, vii., p. 424. The whole number of persons not renominated by him is given:

In 1827	· · · · ·	1		In 1829	· · · · ·	3
In 1828	· · · · ·	4		Total	· · · · ·	8

He had not been long in office before friends became tired of this policy and grew cool in his service, while enemies took advantage of it and used all their influence against him. Mr. Clay remonstrated, and urged the removal of the principal custom-house officers of Philadelphia and Charleston, S. C., who were not only hostile to the President, but were carrying their hostility to such an extent that all their subordinates were becoming infected. The supporters of the administration, therefore, were obliged to contend not only against their enemies, but against the administration itself, which left its power in the hands of its foes to be wielded against its friends. Mr. Adams acknowledged that there might be some truth in these affirmations, but said: "I think it best to wait some time longer before making any removals, and I see yet no reason sufficient to justify a departure from the principle with which I entered upon the administration, of removing no public officer for merely preferring another candidate for the presidency."<sup>1</sup>

A few months later he was considering the appointment of a Federalist as Marshal for the District of Maryland, when interested friends pointed to the unfavorable effect such an appointment would have upon the administration. It was such circumstances that led the President to write on this occasion: "Not a vacancy to any office occurs but there is a distinguished Federalist started and pushed home as a candidate to fill it, always well qualified, sometimes to an eminent degree, and yet so obnoxious to the Republican party that he cannot be appointed without exciting a vehement clamor against him and against the administration. It becomes impossible to fill any appointment without offending one half of the community—the Federalists, if their associate is overlooked; the Republicans, if he is preferred. *To this*

<sup>1</sup> Memoirs, vii., p. 163. A similar case had occurred in the case of a naval officer at New Orleans, who was a violent opponent of the administration. Mr. Clay urged his removal, saying that it was best to avoid pusillanimity as well as political persecution. Mr. Adams replied that his designs had not been carried out, and an *intention* would scarcely justify removal.—Memoirs, vol. vi., pp. 546, 547.

*disposition justice must sometimes make resistance and policy must often yield.*"<sup>1</sup>

Day after day his time and patience were imposed upon by those who could have nothing to hope for from personal application. After such an experience he wrote: "There is no time so ill-employed as that of listening to the self-eulogium and importunities of these solicitors for petty offices when there are none to bestow. Their eagerness to obtain a promise and their propensity to construe every kind word into one, make it necessary to be reserved in conversing with them, and this becomes in their estimation chilling frigidity."<sup>2</sup>

Two removals were made by him: one a Marshal of Louisiana, for good cause; another, a personal friend who had been appointed by Mr. Monroe at his request. Charges were preferred against the officer, and the case was being investigated when Mr. Adams came into office. As soon as the report of the committee was made he was removed.<sup>3</sup>

Mr. Adams entered upon his duties urged from without to reward and proscribe, but scorning to do either, though a large class who are always found on the popular side, receiving no encouragement from him, became the followers of those from whom they could expect more. Appointments were made irrespective of party<sup>4</sup> and regardless of consequence. He left office a victim to his own sense of right, yet with a reputation for justice and honor which he would not have exchanged, nor his friends for him, for the temporary popularity of any "favorite of the people."

The question of the appointment of members came up in 1826 in a new form. A resolution asked for the number of

<sup>1</sup> Memoirs, vol. vii., p. 207. The Federalists, on account of their support in the election, laid claim to their share of appointments.

<sup>2</sup> Memoirs, vii., p. 254.

<sup>3</sup> Gales and Seaton, vol. vi., part i., p. 391.

<sup>4</sup> Mr. Benton says of him: "I was a close observer of Mr. Adams' administration, and belonged to the opposition, which was then keen and powerful, and permitted nothing to escape which could be rightfully—sometimes wrongfully—employed against him, yet I never heard the accusation (that he had made appointments or removals for political reasons), and have no knowledge or recollection at this time of a single instance on which it could be founded."—"Thirty Years' View," vol. i., p. 159.

members who had received any office whatever during their term of service or within six months afterward, and the entire number from the time of Washington was found to be one hundred and seventeen.<sup>1</sup>

In 1826, in the debates on the Panama Congress, a resolution was brought before the Senate protesting against the competency of the President to have appointed ministers to that Congress without the advice and consent of the Senate, but notwithstanding prolonged discussion, nothing came of it.<sup>2</sup>

May 4, 1826, Mr. Benton presented the report of a committee appointed to devise means for reducing the executive patronage. One of the bills recommended that means be taken to secure in office faithful collectors and disbursers of the revenue, and the displacement of defaulters; and another to regulate the appointment of postmasters. Owing to the lateness of the hour no action was taken upon the report at this time, but it played an important part in subsequent debates.<sup>3</sup>

<sup>1</sup> The report made was as follows :

8 years of Washington's term to March 3, 1797	.	.	.	.	.	.	.	.	10
4 " John Adams' "	"	1801	.	.	.	.	.	.	13
8 " Jefferson's "	"	1809	.	.	.	.	.	.	25
8 " Madison's "	"	1817	.	.	.	.	.	.	29
8 " Monroe's "	"	1825	.	.	.	.	.	.	35
13 mo. of J. Q. Adams' "	April 13, 1826	.	.	.	.	.	.	.	5

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These were distributed among the different departments as follows :

State Department	:	:	:	90	War Department	:	:	:	16
Treasury "	:	:	:	3	Post-office "	:	:	:	8

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The appointments in the Department of State were :

By Washington	:	:	:	10	By Madison	:	:	:	20
By John Adams	:	:	:	13	By Monroe	:	:	:	19
By Jefferson	:	:	:	24	By J. Q. Adams	:	:	:	4

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Of these ninety, thirty-one were from the Senate and fifty-nine from the House.—Niles, xxxvi., p. 267.

<sup>2</sup> By vote of twenty-three to twenty-one, it was laid on the table.—Gales and Seaton, vol. ii., part i., pp. 383-404, 405, 589, 597-619, 623-640, 642.

<sup>3</sup> It is difficult to see what acts of this or any previous administration called for such a bill. Mr. Benton's speech was the only one made, and is of interest only when compared with later speeches on the same subject.—Gales and Seaton, vol. ii., part i., pp. 670, 672; vol. ii., part ii., Appendix, pp. 133-138.

V.

PRESIDENT JACKSON'S INTERPRETATION OF THE CONSTITUTION.

GENERAL JACKSON'S election is called the result of a political revolution. That this did not necessitate a radical change in the subordinate officials, we have evidence in the words of Jefferson and the course pursued by him. The Anti-Federalists' accession to power in 1801 had been no less a revolution, and Jefferson always considered that those who had taken part in it were entitled to consideration.<sup>1</sup> Yet, while firmly believing that *appointments* made on that principle would please the people, he did not consider himself justified in creating vacancies to be so filled. But while the circumstances in 1801 and 1829 were identical, in that both elections indicated, to a certain extent, a change in the political opinions of the country, there were some essential differences. Jefferson found all offices in the hands of Federalists; Jackson found in office not only men of opposite political creeds, but many of his own supporters who had used their official influence to secure his election. The predecessor of Jefferson had left no patronage for the President-Elect. Thirty-eight nominations of Jackson's predecessor, the Senate had refused to act upon, that the choice might be made by the new Executive.<sup>2</sup> Jefferson found in some instances officers in power whose duties made them odious to the people, and he believed that other offices were unnecessary. Jackson could plead no such excuses.

<sup>1</sup> "In appointment to public offices of mere profit, I have ever considered faithful service in either our first or second revolution as giving preference of claim, and that appointments on that principle would gratify the public and strengthen confidence."—Works of Jefferson, vol. v., p. 136. July 17, 1807.

<sup>2</sup> Gales and Seaton, vol. vi., pt. i., p. 392.

The Executive who took the helm in 1829 had given forth no uncertain sound as to the principles which should actuate other men in the same position,<sup>1</sup>—the Chief Magistrate of a great and powerful nation was never to indulge in party feeling. October 6, 1825, the Legislature of Tennessee nominated him for the presidency in 1829. A week later, he resigned the senatorship, and in the same paper recommended that members of Congress should be made ineligible to office under the General Government during the term for which they were elected, and for two years thereafter, except in the case of judicial office.<sup>2</sup>

Mr. Jefferson had not believed in the reëligibility of the President, yet, for the good of his country, had been prevailed upon to accept office a second time. General Jackson did not believe in yielding to party feeling, nor in tempting members of Congress with office; yet, to those who remembered that varying circumstances often change views, and that General Jackson never forgot an injury, the words of his inaugural had an ominous sound.<sup>3</sup>

Immediately after the inauguration, the Senate met in executive session to act upon nominations. Of the six members of the cabinet whose names the President sent in, five were members of Congress, and within three months he appointed in addition, from the same body, three foreign ministers and four other officers.<sup>4</sup>

<sup>1</sup> Monroe Correspondence, 1816; Niles, xxvi., 165–6.

<sup>2</sup> Niles, xix., p. 157. This was intended as a rebuke to Mr. Adams, and met with favor from the extreme Democratic element, who had always desired such an amendment.

<sup>3</sup> "The recent demonstration of public sentiment inscribes on the list of executive duties, in characters too legible to be overlooked, the task of reform; which will require particularly the correction of those abuses that have brought the patronage of the Federal Government into conflict with the freedom of elections, and the counteraction of those causes which have disturbed the rightful course of appointment, and have placed or continued power in unfaithful or incompetent hands. In the performance of a task thus generally delineated, I shall endeavor to select men whose diligence and talents will ensure in their respective stations able and faithful coöperation, depending for the advancement of public service more on the integrity and zeal of the public officers than on their numbers."—Niles, vol. xxxvi., p. 29.

<sup>4</sup> In addition to the members of the cabinet, he appointed Louis McLane, Minister to England; Wm. Rives, Minister to France; Thomas P. Moore,

The Senate remained in executive session until March 18th, yet little business was done.<sup>1</sup> As soon as they had adjourned, the reform began. Neither age, sex, nor condition was spared. *Niles' Register* headed a new column "Appointments by the President," and the names of all were followed by the suggestive words, "Vice . . . Removed." It was impossible to obtain official record of the changes made.<sup>2</sup> No one knew whose turn had come, whose turn would come next. Clerks who had been appointed by Washington and Jefferson, and had grown gray in the service, were dismissed without warning.<sup>3</sup> There had always been an understanding that so long as an officer was faithful and capable he should retain his position. Clerks were now told that no complaint had been made against them, but that their places were desired for others.<sup>4</sup> Men who had been appointed for service in the war, and had become invaluable servants, though, at the same time, unfitted for any other life, were replaced by persons of questionable character and ability. Untold suffering was brought upon officials, not only in Washington but elsewhere, and business interests were threatened, yet men complained, not so much of the private and public injury thus caused, as of the principle involved. Before the last of April, the custom-houses of New York Philadelphia, Boston, New Orleans, and Portsmouth had all been "reformed." In New York, where more than one third the entire revenue of the country was collected, the

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Minister to Columbia; G. W. Owen, Collector at Mobile; John Chandler Collector at Portland; J. Johnson, Appraiser at New York; J. S. Storer, District Attorney for Florida. All of these were important offices.—*Niles*, xxxvi., p. 267; *American Statesman*, p. 480. Sumner says that in one year Jackson appointed more members than any one of his predecessors in a whole term.—

"Life of Jackson," p. 147.

<sup>1</sup> *Gales and Seaton*, vi., pt. i., p. 385.

<sup>2</sup> Niles complained repeatedly that no regular lists of removals and appointments could be made out, and says that they should be given for the public instruction.

<sup>3</sup> Niles mentions especially the removal of Major Melville, the last survivor of the Boston "Tea-Party," and wishes he might have been spared, even if the work of the office had to be done by a deputy without extra cost to the government, "as some of the newly-appointed officers thus perform *their* duties."—*Niles*, xxxvii., p. 112.

<sup>4</sup> Curtis' "Life of Webster," i., p. 347.

principal officers were removed, and also twenty-five subordinates, while an equal number of new officers were added. His associates had testified to the fidelity and integrity of the former collector.<sup>1</sup> But his place was given to a violent partisan of the President's, a chronic beggar for office,<sup>2</sup> a man who later became a defaulter for \$1,500,000.<sup>3</sup> With such a man at the head, and fifty inexperienced assistants, it is not surprising that business men complained.<sup>4</sup> The Collector of Boston was removed, and when he protested, was told that after a political revolution the unsuccessful partisan ought to submit without repining to the natural consequences of defeat.<sup>5</sup>

In the Post-office Department there were four hundred and ninety-one removals,<sup>6</sup> not including the subordinates. Of these, nineteen-twentieths were in districts where there had been the greatest safety and promptness in the mails.<sup>7</sup> Appointments here were made and unmade with surprising rapidity,<sup>8</sup> and in spite of the remonstrances of the President's

<sup>1</sup> Niles, vol. xxxvi., p. 163.   <sup>2</sup> Mem. J. Q. Adams, iv., p. 133. Oct., 1818.

<sup>3</sup> House Docs., No. 313, 25th Cong., 2d sess. Colonel Swartwout's letters furnish the best evidence of his character. Mackenzie's "Life of Van Buren," 209, 210.

<sup>4</sup> Gales and Seaton, vi., pt. i., p. 378.

<sup>5</sup> Henshaw-Johnson Correspondence.—Niles, xxxvii., p. 101.

<sup>6</sup> The official report as given in Niles, vol. xxxvii., p. 105, is significant as showing the number in the different States. It is as follows:

Maine . . . . .	15	North Carolina . . . . .	4
New Hampshire . . . . .	55	Georgia . . . . .	2
Vermont . . . . .	22	Alabama . . . . .	2
Massachusetts . . . . .	28	Mississippi . . . . .	5
Rhode Island . . . . .	3	Louisiana . . . . .	4
Connecticut . . . . .	20	Tennessee . . . . .	12
New York . . . . .	131	Kentucky . . . . .	16
New Jersey . . . . .	14	Ohio . . . . .	51
Pennsylvania . . . . .	35	Indiana . . . . .	19
Delaware . . . . .	16	Illinois . . . . .	3
Maryland . . . . .	14	Missouri . . . . .	7
Virginia . . . . .	8	Territories . . . . .	5

<sup>7</sup> Niles, xxxvi., p. 315. Niles utters an indignant protest against these post-office changes, saying: "Political reasons never entered into its institution. Honest and capable, industrious and obliging postmasters should not be dismissed for opinion's sake. Persons are now dismissed without even the preference of charges against them affecting their 'moral character' or 'personal standing.'"—Vol. xxxvi., p. 313.

<sup>8</sup> At Hartford, Conn., the Postmaster, Mr. Law, was removed, and Mr. Norton appointed in his place. The latter was immediately suspended, as the

friends.<sup>1</sup> "Economy" had been one of the battle-cries of the campaign. One of the first practical illustrations of it was the removal of General Harrison while on the way to his destination as Minister to Columbia, the announcement of it reaching him immediately after his arrival,<sup>2</sup> and nearly the entire diplomatic corps was recalled, involving great additional expense.<sup>3</sup> The Post-office Department had been self-supporting under the former Postmaster-General.<sup>4</sup> The announcement was soon made that there would probably be a deficit of \$100,000 during the first year of the new régime. Old and experienced officers had been removed, and the large number of new ones who supplied their places were not able to perform the same amount of work. The same was true in the collection of the revenue, where fifty additional officers were required.<sup>5</sup>

While the interests of the country at large thus suffered from the policy of "economy," in the city of Washington the change was most noticeable. The permanency in the tenure of office had had an important influence on the growth and prosperity of the city.<sup>6</sup> Men now hesitated to establish homes while their positions depended on the whims of a superior.

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friends of the administration remonstrated and sent a delegation to Washington in regard to it.—Niles, xxxiii., p. 131. A week later comes the announcement: "Mr. Norton was appointed Postmaster of Hartford on Thursday of last week, and the next day found himself removed to make place for Mr. John Niles."—Niles, xxxiii., p. 149. The same number of the *Register* contains the weekly list of removals, fifty-two in all, and says many other changes in postmasters are reported.

<sup>1</sup> Special complaint occurred in the removal of the Utica, N. Y., Postmaster. No charges were preferred by Postmaster-General Barry, and he had the highest recommendation from the former Postmaster-General.—Niles, xxxvi., p. 313. He was a Jackson man, appointed by Mr. Adams ("Mem. J. Q. Adams," viii., p. 192), but was removed and the place given to a "better Jackson man."

<sup>2</sup> Gales and Seaton, vi., 242.

<sup>3</sup> One of Jackson's adherents said these persons should consider it as a privilege that they were given the opportunity to visit their friends and country after long absence!—G. and S., vi., p. 247.

<sup>4</sup> Clay said there had been a surplus of \$250,000 when Jackson came into office.—Debates, x., p. 2113. <sup>5</sup> Gales and Seaton, vi., pt. i., p. 385.

<sup>6</sup> Curtis, "Life of Webster," i., p. 347. J. A. Hamilton said the city was in an uproar of excitement owing to removals from office.—Reminiscences, p. 139.

The corrupt use of the press was to be "reformed." Mr. Adams writes, April 16th: "The appointments, almost without exception, are conferred upon the vilest purveyors of slander during the late electioneering campaign, and an excessive disproportion of places is given to editors of the foulest presses."<sup>1</sup> Senator Clayton said, a little later: "The public press has been \* \* \* not shackled by a gag-law, but subsidized \* \* \* by salaries, jobs, and pensions granted to partisan editors. The appointment of editors is not casual, but systematic. They were appointed because they were editors."<sup>2</sup> *Niles' Register* for June 13th says: "About twenty-five editors of very decided, if not violent, party newspapers have been already appointed to office, and some of them to places of much responsibility and great profit."<sup>3</sup> Later a list was made out of fifty-five editors appointed to office during the first two years of the administration, most of them continuing to edit their papers while in office.<sup>4</sup>

Complaint was made that the time of the President, which should have been given to important business, was wasted in attending to applications, and many bore witness to the extraordinary zeal of the applicants. His partisans told of the "official decision and brevity" with which such visitors were treated, and said that no annoyance was felt, and that applications were not pressed in an uncourteous manner.<sup>5</sup>

Thus the matter stood when Congress met in December. It was estimated that two thousand removals took place during the first year, nearly all during the recess of the Sen-

<sup>1</sup> Memoirs, viii., p. 138.

<sup>2</sup> Niles, vol. xxxvi., p. 250.

<sup>3</sup> Gales and Seaton, vi., pt. i., p. 238.

<sup>4</sup> *Globe*, vol. xxii., pt. i., p. 489.

<sup>5</sup> Letter of "Aristides," May 2, 1829, Niles, xxxvi., p. 152. This is probably the only instance on record where a President has not confessedly been annoyed by office-seekers. The letters of his predecessors are filled with such complaints, but the friends of President Jackson say they do not desire office, and never seek it in an improper manner. "Aristides" tells us that callers "make their salutations and retire after an interview of from one to five minutes." He says that it would not do to dismiss all public officers at once, although a civil revolution had been accomplished, but "it behooves us to be patient and have confidence the good work is slowly but surely progressing."

ate.<sup>1</sup> The places thus made vacant had been filled by members of Congress, by partisan editors, by men lacking every qualification of ability and character.<sup>2</sup>

In view of what had transpired during the recess, the first message of the President was awaited with interest. In it,<sup>3</sup> he recommends the exclusion of members of Congress from all offices except judicial, diplomatic, or those connected immediately with the cabinet. These exceptions covered nearly all of his own appointments and included all offices which members of Congress would specially desire. He recommended also a general extension of the law limiting

<sup>1</sup> In Story, ii., p. 355, note by Judge Cooley, is a list cited from the *National Intelligencer* of September 27, 1832. It is confessedly imperfect, but is as follows :

Diplomatic Corps . . . . .	8	Post-office . . . . .	491
Executive Departments . . . . .	36		
Other Civil Departments . . . . .	199		734

Senator Holmes made out the following :

Nominations postponed . . . . .	38	Estimated number of clerks . . . . .	500
Heads of departments . . . . .	5	Officers of the customs . . . . .	151
Removals in departments . . . . .	46	Deputy collectors, etc. . . . .	600
Other removals . . . . .	150		
Post-office Department . . . . .	491		1,981

—From Gales and Seaton, vi., p. 390.

A very large proportion of these included the most profitable offices in the gift of the Executive, and as each person removed a large number of his subordinates, two thousand does not seem an exaggerated estimate. Amos Kendall admits that one seventh of the office-holders in Washington were removed, and one eleventh in the government employ outside of the city.—Autobiography, p. 301.

<sup>2</sup> Senator Bell said of some of the first nominations sent to the Senate, that in the whole forty years since the government had existed, it would be impossible to collect a number of infamous and degraded characters in the list of United States officers equal to those then under consideration.—“Mem. J. Q. Adams,” viii., 188, 189. Mr. Adams says : “Very few reputable appointments have been made, and those confined to persons who were indispensably necessary to the office.”—Memoirs, viii., p. 138. “The appointments are exclusively of violent partisans, and every editor of a scurrilous and slanderous newspaper is provided for.”—Memoirs, viii., pp. 144, 145. A large number of disgraceful appointments had been made in Florida. Mr. White of that State gave the President, from personal knowledge, an account of the men thus placed in office, and some of them were removed. Mr. Adams said, after an interview with Mr. White : “If he had extracted the quintessence of all the penitentiaries of the Union to represent the virtues of the government in Florida, he could not have made the appointments worse.”—Memoirs, viii., 172.

<sup>3</sup> Annual Register, 1829-30, p. 8.

appointments to four years. This had the appearance of a desire to justify his removal of so many officers not included in the four years' limitation law. He shows that he has not forgotten the position conferred on Mr. Clay by Mr. Adams, as he recommends twice in the message the exclusion from office of representatives in Congress who may have been officially concerned in the election of President.

In view of the large number of names to be acted upon by the Senate, it was expected that a list of them would be immediately sent in. A month, however, elapsed before any names were presented, and two months before all were given to the Senate.<sup>1</sup> When they were at last under consideration, so unwise did most of them seem that Webster says but for the President's popularity out-of-doors, the Senate would have rejected half.<sup>2</sup> As it was, a large number were rejected, some of them unanimously, others with only a small vote in their favor.<sup>3</sup>

The two questions involved in these nominations gave rise to prolonged and stormy discussions; the first, concerned their constitutionality, the second, their expediency. On the first point it was held by a part of the opposition that the Constitution gave the President power to fill but not to create vacancies during the recess, while others believed that the Senate should decide as to removals as well as appointments. On the second point, objection was made

<sup>1</sup> Annual Register, 1829-30, p. 21.

<sup>2</sup> "Private Correspondence of Webster," i., p. 501.

<sup>3</sup> Mr. Lee and Mr. Gardner were rejected unanimously. A few of the others were:

	Neg.	Aff.
Mr. Decatur . . . . .	43	1
Mr. Dawson . . . . .	42	5
Mr. Cushman . . . . .	36	9
Mr. Hill . . . . .	33	15
Mr. Herricks . . . . .	23	22
Mr. McRoberts . . . . .	21	20
Mr. Rector . . . . .	23	21

—From Annual Register, 1829-30, p. 21.

John Tyler says that when "Jackson nominated a batch of editors to office but two have squeezed through, and that by the whole power of the government here having been thrown into the scale."—"Life and Times of the Tylers," i., p. 408. The editors thus rejected "were either subsequently renominated and confirmed or generally secured better places at Jackson's hands," P. 409.

that experienced officers were removed and that the country had suffered loss through the mismanagement of new officials, the private character of many of whom was a disgrace to the nation.<sup>1</sup> Opportunity for discussion was given in the repeated resolutions introduced asking that reasons be given for the removal of various individuals,<sup>2</sup> yet the subject was too engrossing not to be introduced whenever occasion permitted.<sup>3</sup>

It seemed difficult to prove, in view of the decision of 1789, that the President had transgressed his constitutional powers. The way was therefore open to a renewal of the question as to what those powers were. It assumed an interesting form, as it found marshalled on the side of "implied powers" all the adherents of Jefferson and Jackson,<sup>4</sup> while their opponents became "strict constructionists."<sup>5</sup> It

<sup>1</sup> The greatest opposition on the latter score was to the Florida appointments, p. 60. A gentleman familiar with the circumstances had interceded with the President to withdraw the names as the persons were of suspicious character and odious to the Territory. When the President assured him that every removal had been for defalcation or oppression, he visited the Secretary of State to learn the specific charges, that they might be made known in Florida. Here he was told that the President's recollection was at fault, that they gave no reasons for removals. Mr. White then saw members of the Senate individually, and his account of the nominees was so damaging that the President sent for him, and finally withdrew the names.—"Memoirs J. Q. Adams," viii., pp. 172, 176, 177; Gales and Seaton, vi., pt. ii., p. 394.

<sup>2</sup> 1. Senator Barton's resolutions of March 17th.—Gales and Seaton, vi., pp. 457-467. 2. Senator Mark's resolutions in the case of Wm. Clark, removed from the Treasury Department.—G. and S., vi., pp. 467-470. 3. Senator Barton's resolutions of April 21st, in the case of Theodore Hunt.—Gales and Seaton, vi., pt. i, pp. 367-374. 4. Senator Barton's resolutions of April 26th, in case of James Carson.—G. and S., vi., p. 384. 5. Senator Holmes' resolutions of April 28th, on the general question of the competency of the President to make such removals.—G. and S., vi., pp. 385-396.

<sup>3</sup> Some of the most important speeches were made ostensibly on Foot's Resolution. 1. Speech of Senator Grundy, March 1st, in favor of the President.—G. and S., vi., pp. 210-220. 2. That of Senator Clayton, March 4th, on the opposite side.—G. and S., vi., pp. 224-244. 3. Speech of Senator Livingston, March 15th, in support of the President.—Gales and Seaton, vi., pp. 247-264. Other senators discussed it at less length.

<sup>4</sup> See especially the speech of Senator Grundy.—Gales and Seaton, vi., pp. 210-220.

<sup>5</sup> Speech of Mr. Clay.—Clay's Works, vi., p. 11, *et seq.* Webster's Speeches, Whipple's edition, pp. 395-406.

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was not possible, however, at this time to reverse that decision, and all resolutions calling into question the power of the President were out of place and rejected on that ground. On the side of expediency the opposition found strong arguments in the derangement of the post-office and custom-house affairs, as well as in the principle of corruption introduced. The administration shielded itself behind the number of removals made by other Executives, to which no objection had been made; in the changes introduced by Jefferson and his reasons for them; and in the principle of rotation in office.<sup>1</sup>

No constitutional or legislative questions were settled by all these debates of 1830; no new arguments were advanced on either side, yet they show the intensity of feeling in every part of the country.<sup>2</sup> But the subject was by no means dismissed. Constant agitation was the only weapon of the opposition, and they used it on every occasion. In 1832 a

<sup>1</sup> The point of issue was evaded entirely. Benton in his "Thirty Years View," gives nine columns ostensibly to removals by Jackson. He dismisses the subject, however, in a column and a half, in which he tells us of the great number Jackson did *not* remove, and devotes the rest of the chapter to adulations of Jefferson and platitudes on the civil service. He complains of the corruption in the service a dozen years later, but omits to mention the part played by Jackson, vol. i., p. 160, *et seq.*

Senator Grundy strained the question, and applying it to cabinet officers, dwelt upon the inconvenience caused if the President could not remove them. Of inferior offices, he claimed that if they were profitable and advantageous they should not be monopolized too long; if they were disadvantageous, the burden should not be borne too long. Of the personal suffering caused he said: "If an individual can not live without office, I pronounce him unfit for that." Senator Barton answered him by saying that no one wished to take from the President the power to remove cabinet officers. The second class, however, were public servants, and offices were not created to be used as a means of bribery, or instrument of corruption in the hands of any man.—G. and S., vi., p. 457.

<sup>2</sup> Maine, Missouri, and Florida were all prominent in the opposition. Senator Grundy ridiculed the idea of any unusual excitement, saying, there was the same commotion raised against Jefferson. "As well attempt to raise a commotion in the ocean by throwing in a few pebbles, as to agitate the people of this nation on account of the removal of a few subordinate officers who have held their offices already too long a period, and whose places are well supplied."—G. and S., vi., p. 218. The administration never seemed able to appreciate the difference between thirty-nine removals and two thousand.

series of resolutions was presented by Mr. Ewing,<sup>1</sup> asserting that the removal of public officers for any other purpose than failure to discharge their official duties was hostile to the spirit of the Constitution; and that the Senate should not confirm the nomination of any person to fill a supposed vacancy unless the previous officer had been removed for sufficient cause.

In the same year, the House asked for information in regard to the number of members of Congress appointed to office by President Jackson,<sup>2</sup> and at the same time, the usual amendment was proposed, making such person ineligible.<sup>3</sup>

In 1834, Mr. Clay presented a series of four resolutions.<sup>4</sup> The substance of them was that the Constitution did not give the President the power to remove at pleasure, and that means should be taken to provide by law for the non-removal of all officers without the consent of the Senate, except those in the diplomatic service.

In 1835, the entire strength of the opposition was called out in support of a bill introduced by Mr. Calhoun to reduce the executive patronage.<sup>5</sup> Certain sections of this provided for the repeal of the four years' limitation law, and for assigning to the Senate reasons in case of removals. The limitation law, when passed, had been felt by many to be an unwise measure. In its workings, positive injury had been avoided only by the wise course of Mr. Monroe and Mr. Adams. When all restraint was taken away, it served as a constitutional excuse to justify frequent and unnecessary removals. Calhoun, Clay, and Webster now joined forces against a common foe, though not for a common cause,<sup>6</sup> against not the man, but the policy he inaugurated. As in 1830, all met on common ground on the one point, that

<sup>1</sup> Gales and Seaton, vol. viii., p. 181.

<sup>2</sup> Gales and Seaton, ix., pp. 901-911.

<sup>3</sup> Gales and Seaton, ix., pp. 893, 894.

<sup>4</sup> Gales and Seaton, x., p. 834. He afterwards prided himself that these were the first introduced by him into the Senate.—*Globe*, i., 220.

<sup>5</sup> Gales and Seaton, vol. xi., pp. 361-392, 418-491, 495-510, 513-535, 537-539, 552-571, 576; vol. xii., pp. 2470-2482.

<sup>6</sup> Von Holst, "Life of Calhoun," p. 110.

the Constitution limited the President's power of removal as well as of appointment.

Calhoun saw in the abuse of executive power only the natural result of putting great authority in the hands of a single man, and made it one of his strongest arguments in favor of divided sovereignty. He took advantage of the opposition to the President's course to make his bill the entering wedge to limit the powers of the general government. Many, blinded as to the cause of the evil, went hand and hand with him. That the evil existed, all admitted; that the cause of it lay not so much in the Constitution itself as in the act of 1789, was generally believed; that the Senate, as well as the President, could make a corrupt use of the power, was entirely overlooked; the only remedy ever suggested was to take the authority from the President and give it to the Senate.

Mr. Calhoun pressed the bill, and it was passed by the Senate. A year elapsed before it came up in the House, and then only to disappear in discussion of Committee of the Whole.<sup>1</sup>

Mention has thus been made in detail of the most important attempts at legislation during the presidency of General Jackson, to show how keenly alive was the sentiment of a large class to the evil results of his policy. But all attempts to check it by legislative enactment signally failed.

<sup>1</sup> The position taken on this bill by Mr. Webster has often been assailed, especially by Mr. Adams.—*Memoirs*, ix., p. 224. Webster's private correspondence shows the sincerity of his views, although he publicly acknowledged that they might be colored by the character of the man in office. Writing Jan. 15, 1830, of the probable general discussion of the subject by the Senate, he says: "The power of removal as a distinct power, and as residing in the President alone, has been often discussed, but I confess I doubt its existence."—*Private Cor.*, i., p. 483. He wrote at the same time to Chancellor Kent, asking his views on the question. The latter replied, Jan. 21, 1830, that he believed the Senate should be included in the power, but that after the declaratory act of Congress, and an acquiescence of half a century, it was too late to call it in question.—*Private Cor. of Webster*, i., pp. 486, 487. The thought is identical with that expressed by Mr. Webster in the debate of 1835. His important speeches on the question are: *Speech at Worcester*, pp. 347-352; on the presidential protest, pp. 367-392; on the appointing and removing power, pp. 394-406.—Whipple's edition.

There were several very different reasons for this. First, the only alternative ever proposed—the union of the Senate in the power of removal—was open to the same objections that had been raised in 1789, and was only a choice of evils. Second, many believed that an amendment to the Constitution would be necessary to remedy the fault, and that frequent amendments were objectionable. Third, many thought that the power was rightly placed, and that its abuse by one person did not justify interference with a principle in itself judicious. Fourth, there had always been a traditional opinion in favor of rotation in appointed as well as elective officers. Fifth, the people had gained a taste of office-holding, and, as long as there was indication that their desires could be gratified, favored no measures that would impair their prospects.

Congress was thus divided as to the cause of the evil and the remedies to be applied. The one thing that might have availed—a determined effort on the part of the President to check the wrong—was not tried. Granting that a large proportion of the removals were made by his subordinates, he is still inexcusable. The author of the presidential protest had asserted in the most unequivocal terms his belief that the Executive controlled those under his authority.<sup>1</sup> If his power over the funds of the nation was all-sufficient, it certainly should have been the same over all civil officers. Unnecessary removals and disgraceful appointments, whether made by the President personally, or by his agents, have made the name of Andrew Jackson the best remembered in the history of our subject.<sup>2</sup>

<sup>1</sup> Gales and Seaton, x., pt. i., pp. 1317-1336.

<sup>2</sup> The most remarkable statement connected with the account of the period is made on the authority of Mr. Parton. Six weeks before General Jackson's death he said to Rev. Dr. Edgar: "What will posterity blame me for most?" Dr. Edgar gave an evasive answer, but at length said: "I think posterity will blame you most for proscribing people for opinion's sake. In Kentucky every Adams man was turned out of office except one, and he resigned because he said he should have to bear the blame of all the rascality done in the State." General Jackson replied that during all his presidency he had turned but one subordinate out of office by an act of direct personal authority, and he was a postmaster. When Dr. Edgar expressed his surprise, he repeated the statement with emphasis.—"Life of Jackson," iii., 669.

## VI.

### RESULTS OF PRESIDENT JACKSON'S INTERPRETATION.

PRESIDENT JACKSON had sown the seed; the fruit remained to be gathered during Mr. Van Buren's "appendix" to his administration. Numerous defalcations soon convinced the people that "change" was indeed necessary. At the close of Mr. Adams' term a deficit of two thousand dollars in the accounts of a treasury assistant had branded the officer as a criminal, and in the eyes of the opposition the President became a sharer in the crime. Now, mismanagement and corruption in every department of the government service<sup>1</sup> formed a painful contrast to the general honesty and purity of the pre—"reform" period. No improvement could be hoped for from a President who had been "the soul of the Albany Regency," who from his earliest entrance into public life had considered office-holders as the servants of a political party,<sup>2</sup> who had received and merited the credit of introducing the corruption of New York State politics into the general government, and who gave no evidence of wavering faith in a system of which he had been the avowed champion. The people demanded a change, and hoped for it only in change of administration.<sup>3</sup> General Harrison stood ready to promise the needed reformation. In a letter to a friend, written Dec. 3, 1838, he had said: "In removals from office of those who hold their appointment during the pleasure of the Executive, the cause of such removal should

<sup>1</sup> Niles has a list of seventy-five defalcations, lvi., pp. 140, 141. House Docs., 25th Cong., 2d sess., No. 111, has a full list of 183 defaulters from Jan., 1834, to Oct., 1837. H. Docs., 3d, 25th, No. 122, has a supplementary list.

<sup>2</sup> Letter of 1820.—Mackenzie's "Life of Van Buren," p. 30.

<sup>3</sup> Webster's Private Correspondence, i., p. 84.

be stated, if requested, to the Senate, at the time a nomination of a successor is made."<sup>1</sup> In a public speech at Dayton, in September, 1840, he promised to abridge the power and influence of the National Executive.<sup>2</sup> In his inaugural address, he spoke of the danger to the country from the Executive Department, "by the use which, it appears, may be made of the appointing power to bring under its control the whole revenues of the country." And he adds: "Never, with my consent, shall an officer of the people, compensated for his services out of their pockets, become the pliant instrument of executive will."<sup>3</sup>

Two difficulties, however, presented themselves at the outset. The first was, that incompetent, dishonest officers filled so large a proportion of positions. The good of the country demanded their removal, yet, if removed, the cry of "proscription" would be raised. But while Mr. Adams complains of the number dismissed,<sup>4</sup> there seems to be no evidence of unjust use of the power.<sup>5</sup>

The other difficulty lay in the horde of applicants. A new administration meant "change" and "reform." This, to some extent, involved the removal of old officers and the appointment of new ones. Places, therefore, were at the disposal of the President, and all who had been excluded from office desired that their talents and patriotism should have recognition. Mr. Seward tells us that before the printers' ink was dry that announced General Harrison's election, the zeal for office showed itself, and that New York State was not the least active.<sup>6</sup> When the time of the inauguration came, "at the White House, the office-seekers literally took possession, some, it is said,

<sup>1</sup> "Life of Harrison," p. 91. <sup>2</sup> Niles, lix., p. 70. <sup>3</sup> Niles, lx., pp. 1-4.

<sup>4</sup> "Since the close of the session of the Senate last Monday, the removals from office have commenced, and they are going on swimmingly.—Mem., x., p. 448, March 20th.

<sup>5</sup> *Niles' Register* of March 20th gives a list of thirty-seven appointments—the first since members of the Cabinet,—but quotes from the *Madisonian*: "The appointments which have been sent to the Senate for confirmation have been chiefly to fill vacancies," and believes that all removals and appointments which seem to be expected will take place with deliberation. *Niles* of March 27th notes 27 appointments, 25 of them "vice — removed."

<sup>6</sup> Seward's *Autobiography*, p. 508.

even sleeping in the halls and corridors, in order to have the first chance in the morning. \* \* \* Day and night, Harrison was besieged by the crowd."<sup>1</sup>

That President Harrison honestly endeavored to fulfil his promises for reform, we have evidence in the systematic attempt soon made. March 20th, Mr. Webster, as Secretary of State, issued circulars to the heads of all departments, saying that the President wished to correct the abuse of patronage as used to interfere with the freedom of elections. He would consider it cause for removal if partisan interference on the part of any officer in election were used, or if compensation for service were demanded. He wished it to be understood that from all collecting and disbursing officers, promptitude in rendering accounts, and entire punctuality in paying balances, would be rigorously exacted.<sup>2</sup> Just how far it would have been possible to carry out these principles, and if carried out, to what extent they would have remedied the evil, must always remain a matter of doubt. President Harrison's words and conduct bear the mark of sincerity of purpose, and that must have gone far toward securing improvement.

"Reform" was the popular cry, and Mr. Tyler recognized the fact in his brief inaugural: "I will remove no incumbent from office who has faithfully and honestly acquitted himself of the duties of his office, except in such cases where such officer has been guilty of an active partisanship, or by secret means \* \* \* has given his official influence to the purposes of party, thereby bringing the patronage of the government into conflict with the freedom of elections. Numerous removals may become necessary under this rule, \* \* \* and I would have my countrymen understand the principle of the executive action."<sup>3</sup> In his first annual message,<sup>4</sup> he brings the matter before Congress, and recom-

<sup>1</sup> Autobiography, p. 526. Similar testimony is given in the Crittenden Correspondence, i., pp. 136, 140, 149. <sup>2</sup> Niles, lx., pp. 51, 52.

<sup>3</sup> Statesman's Manual, p. 1230.

<sup>4</sup> He calls attention to "the exercise of power which usage, rather than reason, has vested in the President, of removing incumbents from office in order to substitute others more in favor with the dominant party." "My own conduct," he says, "in this respect has been governed by a conscientious purpose

mends regulating it by constitutional measures, believing that nothing should be left to discretion which could be regulated by law. In this statement we have the key to the difficulty as it existed at that time. Every thing had been left to the discretion of the Executive, and where wholesale, indiscriminate removals were made, friends and opponents disagreed as to the wisdom with which that discretion had been exercised. All parties professed a belief that active interference in elections was sufficient cause for removal, yet it was extremely difficult to draw the line between a just freedom of expression and an unjust use of official influence. President Tyler, and all his successors in office who professed to remove only for such reasons, were still left ample room to remove many, and assert that nothing had been done contrary to their expressed words.

The question why the President's suggestion was not acted upon, and a constitutional provision adopted which should definitely mark out the power to be exercised, is a difficult one to answer. A possible explanation is the fact that, unaccountable as it seems, the masses of the people did not at heart desire such a change. The friends of the administration urged that only supporters should be given positions, and that not until all its opposers had been reformed out of office, could any restriction properly be made.<sup>1</sup>

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to exercise the removing power only in cases of unfaithfulness, or inability, or in those in which its exercise appeared necessary in order to discountenance and suppress that spirit of active partisanship on the part of holders of office which not only withdraws them from the steady and impartial discharge of their official duties, but exerts an undue and unjust influence over elections and degrades the character of the government itself. . . . In respect to the exercise of this power, nothing should be left to discretion which may be safely regulated by law. . . . Considering the . . . probability of further increase (in the number of public officers) we incur the hazard of witnessing violent political contests, directed too often to the single object of retaining office by those who are in, or obtaining it by those who are out. Under the influence of these convictions, I shall cordially concur in any constitutional measures for regulating, and by regulating, restraining the power of removal." —Statesman's Manual, pp. 1265-1266.

<sup>1</sup> The best illustration of demands of this character is found in an article cited by Niles (lxiv., p. 315), from the *American Sentinel*: "It is a duty which President Tyler owes to himself, to his friends, to the Democratic party, and to

No change was made by law in the manner of appointing and removing. But did President Tyler fulfil his personal duty and make only such removals as necessity demanded? The columns of Niles give a decided negative to such a question. During the first four months of his administration, the number of names given weekly in the *Register* amounts to two hundred and forty-one, and this is only a partial list. Of these names, all were of principal officers, and we have no clue as to the number of subordinates depending on them.<sup>1</sup> Worthy officers of his own party were removed,<sup>2</sup> editors were favored,<sup>3</sup> nominations insisted upon which were displeasing to the Senate,<sup>4</sup> changes made in the important offices of all the States and larger cities,<sup>5</sup> applica-

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the country at large, thoroughly to DEMOCRATIZE his administration, to remove from office, without hesitation, all secret enemies and lukewarm friends, and to fill their places with men from the Democratic ranks. . . . Rotation in office has generally been held to be a Republican doctrine; and an office-holder should always remember that he is liable to be removed. Those friends of President Tyler holding important stations, who have not the influence to benefit the administration, . . . would relieve the President from an unpleasant necessity, and would certainly exhibit the disinterested character of their friendship, BY RESIGNING."

<sup>1</sup> The Collector of Boston was removed, and a city paper gives the names of eleven subordinates dismissed in one day. A collector was appointed at Philadelphia, and there were said to be twelve hundred applicants for office under him.—Niles, lxiv., p. 135.

<sup>2</sup> Mr. Van Rensselaer was removed from the Albany post-office. The *Louisville Journal* says: "For such conduct the righteous curse of every patriot will be like a burning coal on John Tyler's head."—Niles, lxiv., 165; also, lxiv., p. 64.

<sup>3</sup> One important instance was the appointment of Mr. Harris as Collector of St. Louis. He had been for a long time connected with the *St. Louis Bulletin*.—Niles, lxiii., p. 145.

<sup>4</sup> February 27, 1843, the President sent in the name of Mr. Wise as Minister to France, but the Senate rejected it by a vote of 12 to 24. March 3d he was again rejected, 8 to 26, and a third time, the same day, by a vote of 2 to 29. Mr. Cushing was nominated Secretary of the Treasury, and rejected—19 to 27; a second time the same day, 10 to 27; and still a third time, 2 to 29.—Niles, lxiv., pp. 29-30. The Senate seems to have fully exercised its right of rejection. Niles for June 22, 1844, has a list of twenty-eight appointments, nearly all the names followed by "vice — rejected by the Senate." Niles, lxvi., p. 37, has a list of twenty-two cabinet nominations from March 4, 1841, to March 1, 1844. The Senate confirmed seventeen, rejected five.

<sup>5</sup> Weekly lists in Niles, 1841-1845.

tions received from the lowest classes, and officers appointed who degraded their office.<sup>1</sup> Removals constantly occurred,<sup>2</sup> and as the close of the term approached, not only did he seek to ensure his reëlection by bribes of office,<sup>3</sup> but when all hope of that had to be given up, he found revenge in removing his opponents, and appointing his friends to be servants for the new administration.<sup>4</sup> It is difficult to con-

<sup>1</sup> The *Baltimore Patriot*, of March 15, 1843, says: "Every man who has any regard for the dignity of the government must deplore the low state to which the standard of appointment to office has fallen, a fact of which the lobbies and anterooms of the Executive Mansion continue to give abundant illustration in the crowds of broken-down politicians and shabby adventurers that prowl to and fro and besiege the door of the President's office."—Niles, lxiv., p. 64. Some one writes: "Time was when it was an honor to be an officer, for few but honorable men could get there. Now it is in and of itself rather a disgrace, as it is difficult to avoid the suspicion that a man must have been the mean, cowardly, cringing, servile tool of a party, a mere cat's-paw, in order to get into office; and unless we know his character from some other source, we can hardly help despising him from the fact that he is in office."—Niles lxiv., p. 351.

<sup>2</sup> Complaint is often made of the number of removals at the beginning and close of his term, but Mr. Seward wrote, in 1842: "The evidences that the President would no longer bestow offices upon those who no longer supported him, began to increase and multiply. The post-office advertisements were taken away from the Whig papers; postmasters were removed."—Autobiography, 616. General Scott wrote, April 3, 1843: "Removals, and putting in relatives and corrupt hacks, are the order of the day."—Letters of Crittenden, i., p. 202. Niles, October 7, 1843, says: "The political wheel revolves rapidly at present, tumbling officers head over heels in rapid succession."

<sup>3</sup> "The more the number of his adherents melted away, the more intent upon reëlection did he become, and the more violently did he poke the fire under the boiler of the patronage-machine."—Von Holst, ii., p. 513. The *Democratic Review* has an article on the point in which it says: "Abandon this worse than idle attempt to bribe our favor. Keep your offices, or rather let their incumbents keep them, . . . Before you began upon this system, we protested against it, and forewarned you of the certain result in the united contempt of both and all parties."—July, 1843, pp. 97-101.

<sup>4</sup> Niles, January 25, 1845, has a list of fifty appointments, most of them to fill vacancies caused by removals, adding that a great number of removals and new appointments had been made within a few days, and the papers were complaining loudly.—Vol. lxvii., p. 321. The *Globe* of the same date says: "It is remarkable, too, that among those taken off by this new Tyler epidemic, which seems to be as fatal as the cholera he introduced among the public functionaries at his first coming in, are to be found the chief executive officers of more than one half the States of the Union."—lxvii., 369.

ceive in what further respects the record could contradict the creed laid down in 1841.

Congress made various feeble attempts to show its views of the President's management, yet most of them were actuated by partisan motives,<sup>1</sup> were manifestly unjust or absurd,<sup>2</sup> were repetitions of measures which had been attempted and failed in every preceding Congress,<sup>3</sup> or attempted so much that the question was turned into a farce.<sup>4</sup> A fitting close was made when the Senate cast their influence in favor of the spoils system, and refused to act upon the last nomina-

<sup>1</sup> Mr. Buchanan (June 17, 1841,) introduced a resolution asking the President to cause to be communicated to the Senate a list of all removals made by himself or the heads of departments since March 4th, together with the names of all persons removed and appointed, and a list of all removals of subordinate officers in custom-houses.—*Globe*, viii., p. 63. An amendment was offered to insert the words: "Also from the 4th of March, 1829, to March 4, 1841." But as this would show the removals made by Presidents Jackson and Van Buren, it was opposed by those who objected to the proscriptions of President Tyler, but not to those of General Jackson.

<sup>2</sup> March 16, 1842, Mr. Andrews offered a resolution asking for "the names of members of Congress of the 26th and 27th Congresses who have applied for office, and for what office, distinguishing between those who applied in person and those whose applications were made by friends, whether in person or in writing."—Niles, lxii., p. 61. President Tyler very justly refused to comply with such a request, saying that while appointments were official acts and placed on record, applications were in their nature confidential, and their privacy should be respected. He also intimates that such a request from the House is an infringement on executive rights, as no power was given them not strictly legislative.—Niles, lxii., p. 63.

<sup>3</sup> December 29, 1841, Mr. Clay introduced an amendment making members of Congress ineligible to civil office.—Niles, lxi., p. 299. Jan. 2, 1844, a resolution was offered inquiring into the expediency of providing by law that all removals from office should have the reasons assigned.—Niles, lxv., p. 303. December 17, 1844, a resolution asked for the appointment of a committee to report a bill regulating and limiting the power of removal by the Executive and heads of departments.—*Globe*, xiv., p. 40.

<sup>4</sup> January 10, 1843, Mr. Botts, of Virginia, presented a series of nine charges looking to the impeachment of the President, nearly all of them charging him with high crimes and misdemeanors in regard to appointments. The second specification reads: "I charge him with a wicked and corrupt abuse of the power of appointing to and removal from office. First, in displacing those who were competent and faithful in the discharge of their public duties, only because they were supposed to entertain a preference for another; and, secondly, in bestowing them on the creatures of his own will, alike regardless of the public welfare and his duty to the country."—*Globe*, xi., p. 144.

tions of the President, some of them highly honorable and of great pecuniary value.<sup>1</sup>

If there were any who, after the experiences of the last four administrations, still hoped for better things, they must have lost courage when they read the words of President Polk's inaugural. The subject was of sufficient moment to demand attention, but his words were few and guarded. He says that strict accountability of officers, especially of those collecting the revenue, will be required, and that all failure or delay to account for money will terminate the official connection of the officer with the government.<sup>2</sup> No promise is held out that faithful officers will be retained, or that the power of removal will not be used for party ends. Neither does he censure the active interference of officers in times of election.<sup>3</sup>

Unhampered, therefore, by public pledges, the policy of reward and proscription was carried on with even more than ordinary vigor, since the Mexican war created many new offices, and the executive patronage was largely increased.<sup>4</sup> Whigs were removed and Democrats appointed, solely on account of their political views and irrespective of their qualifications for position, while members of the cabinet traded in office unrebuked by Chief Magistrate or Legislature.<sup>5</sup>

<sup>1</sup> Niles, for March 8, 1845, cites from the Washington correspondent of a New York journal: "Regret will be felt in many cases at the failure of the Senate to act, while in others, the character of the Tyler nominees was such as to leave little to mourn over."

<sup>2</sup> Niles, lxviii., p. 1.

<sup>3</sup> Mr. Polk had in fact more than ten years before expressed his approval of the spoils doctrine. In a speech delivered December 30, 1833, he had upheld President Jackson in the use he made of the appointing power, saying that offices were not to be held during good behavior, but at the pleasure of the President.—Niles, xlvi., pp. 315-319.

<sup>4</sup> Niles, May 30, 1846, says: "Seldom if ever has so vast a scope of power been in the hands of a President of these United States."

<sup>5</sup> An unofficial letter of the Secretary of the Treasury is published which throws light on the subject, and is its own best comment:

DEAR SIR:—On Saturday last I directed your appointment to be made out. Since that period it has been made known to me that you are and always have been a Whig. This was very unexpected intelligence to me. You never did represent yourself to me as a Democrat, but I took it for granted that such was the fact. It is impossible for me to make the removal contemplated for the purpose of appointing a Whig. I have felt constrained, therefore, to revoke the order for your appointment. I regret this very much. Our short acquaint-

Men whose services were indispensable were sometimes retained, but they complained of the entire lack of system in the government service, of the accumulation of untransacted business; of the absence of capability and willingness on the part of clerks.<sup>1</sup> In the Post-office Department the removals amounted to more than two thousand,<sup>2</sup> and numerous changes were made in the closing hours of the administration.<sup>3</sup>

All the efforts of Congress were directed, not to crushing the evil, but to legalizing it. In December, 1845, a resolution was adopted asking that a bill be reported regulating the appointment of officers in proportion to the ratio of population, and limiting the term of certain officers to a period not exceeding four years, and also to inquire into the propriety of limiting the term of service of all civil officers.<sup>4</sup>

In January, 1846, Andrew Johnson offered an elaborate

ance had made a strong impression on my mind in your favor, and I still believe that personally you are entitled to my respect and esteem; but under the circumstances I cannot make the removal and appointment as I intended.

R. J. WALKER.

—*Globe*, vol. xxii., p. 493.

It is well also to remember that the Secretary of War was William L. Marcy, of New York, the author of the cry "To the victors belong the spoils."

<sup>1</sup> A letter is given from the Second Auditor of the Treasury in which he complains of the removal of the best clerks in the office, many of whom, on account of long service, had become invaluable. He mentions one appointed in 1811, one in 1813, others in 1818, 1833, etc. The business of the office was thrown into the utmost confusion. Another officer says that the accumulation of work was due to the increase of business from the Mexican war, the removal of trained clerks, and the appointment of others requiring instruction and experience to make them useful: "There is no remedy which presents itself to my mind other than again obtaining the services, as far as practicable, of the old experienced clerks and the employment of five or six . . . accountants in addition to the number authorized by law."—*Globe*, xxii., pp. 493, 494.

<sup>2</sup> By the official report, the number between March 4, 1843, and March 4, 1849, was :

In the year ending March 4, 1844,	588	In the year ending March 4, 1847,	393
" " " 1845,	672	" " " 1848,	295
" " " 1846, I, 197		" " " 1849,	428

—*Globe*, xxii., p. 495.

<sup>3</sup> One hundred and forty-six names were sent in during the last session of Congress, twenty-four during the first three days of March.—*Globe*, xxii., p. 499.

<sup>4</sup> *Globe*, vol. xv., p. 86.

series of resolutions providing for rotation in office.<sup>1</sup> In June, 1846, a bill was reported which provided for rotation and annual appointment of all subordinate officers,<sup>2</sup> but though debated at length, it did not come to a final vote. One more measure deserves notice, and that was a proposition made in December, 1848, that all officers of the government should be elected directly by the people.<sup>3</sup>

We look for the usual promises made by each new administration, and read in the address of General Taylor, March 4, 1849: "The appointing power vested in the President imposes delicate and onerous burdens. So far as it is possible to be informed, I shall make honesty, capacity, and fidelity indispensable prerequisites to the bestowal of offices, and absence of either of these qualities shall be deemed

<sup>1</sup> The first one reads: "Resolved: That rotation in office, in the opinion of this House, is one of the cardinal tenets in a republican form of government, and ought never to be violated on any pretence whatever, and should be practised by all administrations, regardless of party names." The whole series is a curiosity and shows so manifestly the spirit of the demagogue that it deserves a passing notice, especially in view of subsequent events. He held, first, that eight years was the longest time an office should be held when filled by the President or heads of departments, and at the end of that time the officer should be ineligible to reappointment; second, that appointments should be made on the basis of representation; third, that each Congressional district should furnish its own quota; fourth, that congressional districts should be formed into four divisions, the officers in class one vacating at the end of eight years, class two in six years, class three in four years, class four in two years,—thus providing that a new set, comprising one fourth of all officials, should be introduced every two years; fifth, that *farmers and mechanics should have a fair proportion of these offices.*—*Globe*, vol. xv., pp. 192, 193.

<sup>2</sup> It provided, first, that all auditors, clerks, and messengers in all the different departments should be appointed from the several States in proportion to representation; second, that actual residents be appointed from the congressional districts; third, that those first appointed shall be appointed for four years; fourth, that auditors first appointed should be divided into four classes, and one class vacate at the end of the first, another at the end of the second year, and so on, thus securing rotation and annual appointments; fifth, that a similar plan be followed with clerks; sixth, that messengers be appointed for two years; seventh, the power of removal should remain as then, but the cause for all removals should be kept on file and open to public inspection; eighth, in appointments to fill vacancies, they should be for the unexpired term; ninth, that if such officers should have remained in office eight years, they should not be reappointed to office of the same grade until the expiration of two years.—*Globe*, vol. xv., pp. 953-954.

<sup>3</sup> *Globe*, vol. xx., p. 31.

sufficient cause for removal."<sup>1</sup> But such words had come to be meaningless. Not only subordinate offices were demanded as a reward for party services, but cabinet positions were claimed on the same ground.<sup>2</sup> General Taylor was to be all things to all men, and the era of good feeling was to be renewed,<sup>3</sup> yet from the first, jealousy and threats are seen,<sup>4</sup> and propositions were even made for the public expression of dissatisfaction on the part of members of his own party,<sup>5</sup> and this dissatisfaction, not by reason of the principle at stake, but from displeasure at the division of the spoils. In the Post-office Department, twenty per cent. of the officers were removed,<sup>6</sup> and the resignations were nearly as many.<sup>7</sup>

<sup>1</sup> *Globe*, vol. xx., p. 327. Appendix. Before the inauguration he is reported as saying to a friend that he "denounced with unutterable scorn" the spoils maxim, and that he would not be "a supporter of the infamous system of proscription which distributes the public offices of a country as the spoils of victory."—*Globe*, vol. xxii., p. 47.

<sup>2</sup> Jacob Collamer writes to Mr. Crittenden Jan. 30, 1849, asking him to use his influence to secure his appointment as Attorney-General. He makes the request on the plea that he lost the United States senatorship through his electioneering for President Taylor in Vermont.—"Life of Crittenden," i., p. 337. He was appointed Postmaster-General.

<sup>3</sup> After the nomination, he wrote to a friend who had said that the Democrats would not vote for him if he were a party candidate, and assured him in unambiguous terms that he was *not* a party candidate, but would be President of the whole people.—*Globe*, vol. xxii., p. 537.

<sup>4</sup> A letter from Robert Toombs, April 25, 1850, says: "During the last summer the Government, with the consent of the whole cabinet except Crawford, threw the *entire patronage* of the North into the hands of Seward and his party." "Life of Crittenden," i., p. 365. "The President will be unwise if he neglects or proscribes my friends."—Private Correspondence of Clay, p. 586.

<sup>5</sup> Clay writes, June 21, 1849. "I regret extremely that many of the appointments of the President are so unsatisfactory to the public, and still more that there should be occasion for it. . . . You tell me that it will be difficult to repress an expression of the Whig dissatisfaction prior to the meeting of Congress. I should be very sorry if this was done so early, if it should be necessary—I hope it may not—to do it at all."—Private Cor., p. 587.

March 9, 1850, number of offices	.	.	.	17,780
Between March 4, 1849, and March, 1850.				
Appointed on account of removals	:	:	:	3,406
" " " resignations	:	:	:	2,802
" " " deaths	:	:	:	218

The offices where removals were not made were the least lucrative.—*Globe*, xxii., p. 495.

<sup>6</sup> Jefferson had said that resignation would never occur,—Works, iv., p. 402,—

The opposition could not remain inactive, but the mode of attack showed that resentment rather than justice was the moving cause, the humiliation of the President more to be desired than the establishment of right.<sup>1</sup>

As soon as Congress met in December, 1849, Senator Bradbury brought in a resolution, from which nothing could have been gained, but which occasioned prolonged and heated debates for more than a year. He asked that the President cause to be laid before the Senate all charges that had been preferred, or were on file in any of the departments, against persons who had been removed from office since the fourth of March, with a specification of the cases, *if any*, in which the officers charged had had the opportunity to be heard, and a statement of the number of removals made.<sup>2</sup> The entire debate turned on the question whether the President's course had been consistent with his professions and promises. The opposition claimed that the only possible interpretation of the inaugural was that officers were not to be removed unless their "honesty, capacity, and fidelity," were called in question, and a mass of facts was presented to show that removals had been made which could not be explained by these tests.<sup>3</sup> The majority said they did not op-

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and hence a few removals might be necessary to give both parties a fair share in the service. Now, office was regarded only as a make-shift, the uncertainty of tenure making it impossible to consider it a permanent business. Resignations, therefore, occurred as soon as other occupation could be secured.

<sup>1</sup> In January, 1850, a resolution was adopted asking for information as to the postmasters removed, or attempted to be removed, and the reasons for *appointments* made.—*Globe*, xxi., p. 100. Another bill was introduced to prevent the sale and farming out of offices.—*Globe*, xxi., p. 127. In April information was asked as to the part officials had taken in the last Presidential election, and what persons in the government employ were connected with the press.—*Globe*, xxi., p. 818. Frequent requests were made for lists of removals made.

<sup>2</sup> *Globe*, xxi., p. 74.

<sup>3</sup> Senator Bright, of Indiana, said that in that State there were twenty or more Federal officers subject to the approval of the Senate. Of these, one remained, "a monument of executive forbearance, an Executive who commends himself to the suffrages of the people, because he 'loathes proscription.'"—*Globe*, vol. xxii., p. 503. Mr. Bradbury read letters from representatives of sixteen different States, the words of each being, that in his own State no office of any importance was held except by political friends of the administration.—

pose the practice of removal considered in itself, and that they would uphold the policy of the administration if it would only confess that political considerations had been the causes for its removals and appointments.<sup>1</sup>

On the other side it was claimed that the President was perfectly consistent with himself when saying that he "loathed proscription"; that he found all offices in the hands of the opposite party, and that he would have countenanced proscription had he not made removals;<sup>2</sup> that active interference in elections was the cause for most removals made;<sup>3</sup> that the President's assurance that he would remove where he found a lack of "honesty, capacity, and fidelity," did not imply that he would remove only for these reasons;<sup>4</sup> that little faith could be placed in statistics, but an all-sufficient denial of the charge that removals had been made without cause would be found in the fact that General Taylor was an honest man.<sup>5</sup> Webster thought the resolution

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*Globe*, xxii., p. 539. A list is given (p. 543) of the number of heads of bureaus and their clerks:

March, 1849.—Number in office	.	.	56
Whigs	.	.	17
Democrats	.	.	39
March, 1850.—Number in office	.	.	62
Whigs	.	.	53
Democrats	.	.	9

Of the fifty-six in office March, 1849, thirty-two had been removed before March, 1850. Of the thirty-nine Democrats in office in 1849, only six remained at the end of the year, the places of the others having been filled with Whigs. Only one Whig was found lacking "honesty, capacity, and fidelity," and so removed.

<sup>1</sup> Senator Bradbury closed one of his speeches by saying: "It is not the policy of removals that I assail or call in question; it is the inconsistency between the professions and practices of the party in power."—*Globe*, xxii., 51, Appendix. Franklin Pierce, a few years before, had said the same thing: "Whatever was done by the late administration (Van Buren's) was not done under false pretences. . . . We stood before the nation and the world on the naked, unqualified ground that we preferred our friends to our opponents; that to confer place was our privilege, which we chose to exercise. . . . That removals have been made is not the thing of which I complain; I complain of your hypocrisy."—*Globe*, vol. viii., Appendix, p. 159.

<sup>2</sup> *Globe*, xxii., p. 486.

<sup>3</sup> They failed to prove that this test had been applied to officers of their own party.      <sup>4</sup> *Globe*, xxii., p. 500.      <sup>5</sup> *Globe*, xxii., p. 504.

unconstitutional, as it was an interference on the part of the Senate with executive prerogative.<sup>1</sup>

The entire discussion was only a superficial treatment of the evil; the resolution itself was but a temporary expedient, designed to humiliate a victorious party. Instead of sound, incontrovertible argument, we find a vast array of charges and countercharges, with vindications of the character of those appointed and removed, and often excuses for wrong because previous administrations had done wrong. Only in a single instance do we find an attempt to go to the root of the matter. Senator Underwood saw no remedy except in an amendment to the Constitution. "Until you do that, we shall have administration after administration practising this doctrine of 'spoils' or the doctrine of 'equalization' to the end of the government."<sup>2</sup>

Little could be hoped for from such an administration,<sup>3</sup> and from such a Congress, containing, as it did, men who twenty years before had been in the front ranks among the opponents of the spoils system, but who now upheld it.<sup>4</sup> The closing hours of the administration, however,

<sup>1</sup> *Globe*, xxii., p. 1125.

<sup>2</sup> *Globe*, xxiii., p. 39. Each party sought to evade the real question by protestations of patriotism and of a desire for the general good, often carried to such an extent that it became difficult to determine the subject under discussion, or which side the speaker advocated. The following extract from a speech of Senator Mangum is a fair illustration: "If you were to strike the sun from the firmament and leave but a slight sparkling scintillation behind, this great solar system of ours would not be much more immersed in darkness than would the world be if this example of our free government and free institutions were to fail. Every man ought to work for it, every patriot is willing to die for it, and I trust in God it will be perpetual."—*Globe*, xxiii., Appendix, p. 292.

<sup>3</sup> As an example of its continuation under President Fillmore, we have a letter from Mr. Clayton to the Attorney-General. He speaks of a family "who have spent a fortune for the Whig party and have never received a favor from it." Reward was now desired, and he writes: "Do not leave the President until you get a promise that young Dupont shall have the first vacancy. This little appointment will do more to enable us to redeem the State at the next election than any thing else the President could do for us."—Crittenden, ii., p. 11.

<sup>4</sup> Senator Ewing, in 1832, had expressed very emphatically the belief that all removals should have the reasons for them assigned to the Senate (p. 64). Now, he became one of the most active opponents of Senator Bradbury's resolutions.—Speeches in *Globe*, vol. xxiii., pp. 38, 80, 81, etc.

the first evidence of a realization that all previous efforts for reform had been made on a wrong basis. Hitherto every legislative act had in general attempted either to curtail the power of the Executive or to regulate, not eradicate, the evil of rotation. Various measures had been passed by which the removal of incompetent officers could be secured, but not a single one to guard against such persons receiving office. It was apparently impossible to secure an impartial discussion of such a measure, and therefore an act was passed March 2, 1853, as a rider to the civil appropriation bill, providing for the classification of clerks in all the departments except that of State and of Justice, and that no person should receive an appointment in either of the four classes until after he had been examined and found qualified by a board of three examiners.<sup>1</sup> The step was apparently a long one in the right direction, and the act was for many years upheld by those who resisted all attempts at a radical change in methods of appointment, as one that guaranteed the selection of only meritorious persons. But the act was far from being a model one. Its most important defects were: first, the element of competition was wholly lacking, the person who passed the best examination being placed on the same footing as one who secured a mere passing mark; second, the board of examiners in each department consisted of the chief of a bureau and two others appointed by the head of the department, and thus no security was given against political influence or personal favoritism; third, the nature of the examination being optional with the board, there were practically five examining bodies without uniformity of method, and each irresponsible; fourth, any examination which could not be free and open to all must be an unfair and superficial test. The act, when enforced, resulted in empty form; examinations were made difficult to exclude candidates not desired, and relaxed in favor of personal or political friends, and its only effect seemed to be to hinder the work of genuine reform.<sup>2</sup>

<sup>1</sup> *Globe*, 2d sess., 32d Cong., pp. 896, 1048.

<sup>2</sup> As every examiner was a law unto himself and too often an experienced

The diffuse expressions of President Pierce's inaugural were capable of almost any interpretation, yet in reality gave evidence of a desire to place in office only his political adherents.<sup>1</sup> In spite of the act of 1853, reward and proscription was carried on as usual by the "Professors of Political Engineering," as party managers were dubbed. The Post-office Department was in a deplorable condition, letters were lost or delayed, and those containing money were robbed, the majority of the subordinates were mere party pensioners, while the more ambitious ones who performed the work scarcely had time to learn their duties before they were superseded. Here and there a warning voice was raised that no well-ordered service could be expected until the patronage of the department should cease to be the reward of political service,<sup>2</sup> but the law of 1853 seemed to preclude any further attempt at general reform.

The act of 1853, ineffectual as it was, had not included the Department of State, yet no part of the public service demanded a more thorough regeneration. The evils of the spoils system were not brought to every man's door, as was the case in other departments, but were quite as apparent to those who came in contact with the diplomatic and consular service. Desirable as was permanency in the subordinate positions elsewhere, it was almost indispensable here, and to no one was the fact more apparent than to Mr. Marcy himself while Secretary of State under Mr. Pierce. Largely through his efforts an act was passed, and approved August 18, 1856, providing for the appointment of twenty-

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politician, we are not surprised that the entire examination often consisted of the following specimen questions: "How many are four times four?" "What did you have for breakfast?" "Who recommended you for appointment?" "Where would you go to get your pay at the end of the month?"—Senate Reports, 3d sess., 46th Cong., No. 32. J. D. Cox, in *N. A. Rev.*, January, 1871.

<sup>1</sup> He says: "Occupancy can confer no prerogative, nor importunate desire for preferment any claim. A claim for office is what the people of a republic should never recognize." He does not commit himself positively, yet intimates that no reasonable man of any party could expect the administration to retain persons known to be under the influence of political hostility and partisan prejudice in positions which would require "not only severe labor, but cordial coöperation."—*Whig Almanac*, 1854, pp. 26-27. <sup>2</sup> *Harper's Monthly*, Oct., 1855.

five consular pupils after examination by the Secretary of State. It was thought that the salary of one thousand dollars a year would be sufficient to attract into the service young men who would be glad to prepare themselves for their work by learning the language of the various posts where they were stationed, and the technical duties of the position. In time, promotions to the higher grades of service could be made from their number, and thus greater efficiency be secured than was possible where all vacancies were filled by unsuccessful politicians, invalids in search of health, or persons desirous of travelling abroad at government expense. Every thing promised well, but the following session, when the appropriation bill was under discussion in the House, the item in regard to the consular clerks provoked great opposition and was struck out, while a proposed amendment in the Senate restoring the appropriation was voted down.<sup>1</sup>

When President Buchanan entered upon his duties, the system of rotation had been in operation twenty-eight years and no check had been put upon it by either executive or legislative act. Mr. Buchanan had been, at least by implication, an advocate of the theory, as is shown by his opposition, in 1835, to Mr. Calhoun's patronage bill. Even had he realized the enormity of the evil, it was not to be expected that an Executive who could find no constitutional means for putting down the rebellion, could find one for resisting the system of rotation. The tendency at the North was in favor of proscription; at the South, against it,<sup>2</sup> and a desire

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<sup>1</sup> *Globe*, 1st sess., 34th Cong., appendix, p. 28; 3d sess., 34th Cong., pp. 216, 368; *N. A. Rev.*, Oct., 1869.

<sup>2</sup> The democracy of Chesterfield, Va., resolved: "That, while we do not favor incumbency without merit, the doctrine of rotation in office is a doctrine alien to our people and to which, as Democrats, we are utterly and unalterably opposed."—*National Intelligencer* (Tri-weekly), March, 26, 1859.

"It is the fatal doctrine of passive party obedience, and non-resistance—a doctrine so long and successfully inculcated by the party in power—that has brought the affairs of our country into their present deplorable condition . . . This mercenary and slavish doctrine has been enforced by the terrors of excommunication on the one hand, by the slavish promises of reward on the other. 'To the victors belong the spoils of victory,' is the motto emblazoned on their standard. The offices, the employments of the government, are no longer, in

to be all things to all men led President Buchanan to give each section what it specially favored, with the usual result of displeasing all factions. As it was understood that rotation would in general prevail, Washington was thronged with even more than the usual number of place-seekers,<sup>1</sup> and the "claims" of various persons urged with the greatest audacity.<sup>2</sup> With the leading appointments made from political pressure, it was only a natural result that those receiving them improved their opportunities to pay their political debts,<sup>3</sup> and to provide for impecunious rela-

their eyes, public trusts to be conferred and administered for the public good; but of every grade and description, from the highest to the lowest, they are the legitimate booty of a conquering party, to be dealt out in largesses and rewards to its followers."—Speech of Wm. C. Rives, at Richmond, May 3, 1859.

A statement that rotation in office was to be carried out with "inexorable vigor," elicits from Alabama "a round denunciation of all systems of reward and punishment for opinion's sake as contrary to the spirit of our republican institutions, corruptive in its influence on the minds of men aspiring to political distinction, and, consequently, debasing to the moral character of the nation. Such systems may make subservient party menials, but not high-minded, patriotic officials."—Alabama Correspondence, *Daily National Intelligencer*, May 12, 1857.

*The South*, an independent Democratic paper of Richmond, contains a similar indignant protest. See also *N. Y. Weekly Times*, March 21, 1857.

<sup>1</sup> One reporter asserted confidently that the mass of applications for positions, sent in at the time of the inauguration, could not be examined in fifteen years if the heads of departments should give their entire time to that business. There were two hundred applications for the twelve first-class missions, and two hundred and fifty for eleven vacancies in second-class missions.—*N. Y. Times*, May 9, 1857; *National Intelligencer*, May, 16, 1857.

<sup>2</sup> Among others, a meeting was held in Washington of all the New York Democrats then in the city, and a ballot taken for all the candidates for the Federal offices of New York City to be recommended for appointment. On the list was Isaac V. Fowler, who became postmaster, and whose "irregularities," at the lowest estimate, amounted to \$155,000, and several others who were notorious ward politicians. Most of those recommended were appointed.—*Nat. Int.*, March 20, 1857.

<sup>3</sup> A pertinent illustration is found in the following circular addressed to each administration member of Congress from New York :

CUSTOM HOUSE, NEW YORK, Sept. 17, 1858.

SIR : Being about to nominate to the Secretary of the Treasury, for confirmation, a list of appointments for this office, I would be gratified to receive from each administration member of Congress from this city, a list of the names of the persons in his district he desires appointed, with the offices attached. As

tives,<sup>1</sup> making the foreign service of the government a by-word and a laughing-stock.<sup>2</sup> When the party in power felt itself in the throes of dissolution, political assessments were levied to prolong a rule maintained by patronage.<sup>3</sup> When President Buchanan left office, the spoils system had reached the lowest depths. For a generation the government service had been insidiously used to build up the power of the slaveocracy. The enemies who threatened the foundations of the Union did not strike their first blow at Sumter and at Anderson, but their agents had sat in the Treasury and directed it in favor of a section ; they had governed the Post-office Department in the interests of Southern prejudice ; cabinet officers had sent our army to the western frontier,

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the number must necessarily be limited, you will please place the names in the order in which you are most desirous of speedy action, and I will do the best I can. As you must be aware I cannot make appointments without making vacancies by removals, you will please furnish the names of such persons holding office under me in your district whom you are desirous shall not be removed.

Yours very respectfully,

AUGUSTUS SCHELL.

—*Tri-weekly Nat. Int.*, Sep. 22, 1858.

In accordance with this policy, three hundred and eighty-nine officers (out of six hundred and ninety) were removed during Mr. Schell's term.

<sup>1</sup> Gen. Dix states that when he became Postmaster at New York, in place of Mr. Fowler, he found in office a young man from a Southwestern State, who came to the office for one hour on Saturday afternoons and copied letters, receiving \$800 a year, while many of the clerks who worked all day, six days in the week the year round, were receiving \$600 and \$700 a year. He dismissed him, and a few days afterward received letters from Washington signed by a number of senators and representatives, one of whom afterward became President of the United States, asking him to restore the clerk. The restoration was urged by the principal member of Congress, who was his relative, on the ground that he had gone to New York to study law, and that he was appointed with the understanding that he was not to perform the usual duties. *Memoirs of J. A. Dix*, vol. ii., pp. 213-215, 391-393.

<sup>2</sup> Mr. Cass, while Secretary of State, made an unavailing attempt to improve the consular service by renewing the plan of 1856, for consular pupils.—*N. A. Rev.*, Oct., 1860.

<sup>3</sup> The *Washington Union*, the administration "organ," made the announcement, August 12, 1858 : "If there is a person in the government service who does not voluntarily contribute the amount, at least, of two dollars and a half a year on each thousand dollars of his salary to support the cause of democracy, he should be dismissed and his place filled by one who is patriotic and liberal enough to double the contribution."

and our navy to distant seas ; they had intrigued in foreign courts, and openly boasted that they would use the halls of Congress to thwart the plans of those who believed in the justice of the national cause.<sup>1</sup> What was the condition of the country in 1861 but a natural result of the lesson taught for more than thirty years, by precept and example, that public trust was to be used for personal and party ends ; that traffic in office was a legitimate part of every politician's duty, and the government service a lottery where prizes were redistributed every four years to those who had advertised its merits with most success ?

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<sup>1</sup> Andrew Johnson, after the election of 1860, had not advocated secession, believing that in the Senate they could best fight the battles of the South. "And how ? We have the power even to reject the appointment of cabinet officers of the incoming President." Thus they could, "at the very start, disable the administration . . . So far as appointing abroad is concerned, the incoming administration will have no power without our consent. If we remain here . . . it . . . has not even the power to appoint a postmaster whose salary exceeds \$1,000 a year, without consultation with, and the acquiescence of, the Senate of the United States."—*Globe*, 2d sess., 36th Cong., p. 309.

## VII.

### ATTEMPTS AT REFORM.

DURING the first period of our history all questions concerning a candidate for office had been summed up in Mr. Jefferson's famous words, "Is he honest, is he capable, is he faithful to the Constitution?" During the second period these had given way to, "What help can he give in the next election?"<sup>1</sup> At the beginning of the third period, it was necessary to ask, "Is he loyal to the Union?" If the government was not to be destroyed before it could marshal its forces in the field, hundreds of Confederate sympathizers must be removed. In the horde of applicants for place, whose merits Mr. Lincoln once gravely proposed to decide by the avoirdupois weight of their recommendations, the President found a gloomy satisfaction—the people they represented still had confidence in the government.<sup>2</sup> Had there been in 1861 a well-organized system for appointment and removal, time invaluable for the consideration of other questions need not have been wasted in dispensing office to men whose patriotism did not lead them south of Washington.<sup>3</sup> Something must be done to relieve the pressure upon

<sup>1</sup> Among numberless instances is found a letter to Mr. Clay from a gentleman suggesting the advisability of Mr. Clay's favoring the nomination of a certain person as Collector at New York. It was urged on the ground that he was able "by his skill in planning and combining to produce the most astonishing political results." If he was given the office of Collector, "he could on all important occasions command the vote of the city of New York, and, *par consequence*, of the State."—Private Correspondence, Jan. 18, 1841.

<sup>2</sup> Stoddard's Lincoln, p. 207. Julian, pp. 193, 194.

<sup>3</sup> Mr. Lincoln said, a month after his inauguration, "I wish I could get time to attend to the Southern question . . . but the office-seekers demand all my time. I am like a man so busy in letting rooms in one end of his house

the President and heads of departments, and apparently with this in view in 1861 the last bars were thrown down which had kept out undue legislative influence in making appointments. Up to this time, while members of Congress had undoubtedly had great influence in securing positions for constituents, they had not looked upon it altogether as one of their perquisites. But when the official announcement was made that the appointment of postmasters with salaries less than \$1,000 per annum would be made upon the recommendations of members of Congress in the different districts, and that applications addressed to them would receive attention earlier than if sent to the department,<sup>1</sup> a last and fatal surrender of one of the chief executive functions was made to an ally that has since too often played the part of traitor. Yet neither Mr. Lincoln nor his administration was responsible for the final yielding; it had been inevitable since the seeds of the spoils system were first sown and the absorbing question of the war had hastened, not occasioned, the result.

The question of the public service gave place for a time to one of greater moment. But amid the pressure of other cares, Mr. Seward found opportunity to urge once more the necessity of trained servants in our consular positions, and after great opposition a bill was passed in 1864, providing for thirteen consular clerks to be appointed by the President after examination by the Secretary of State.<sup>2</sup> With this excep-

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that he cannot stop to put out the fire that is burning the other. . . . It does appear to me that our people are fast approaching the point where it can be said that seven eighths of them are trying to find out how to live at the expense of the other eighth." And again—"If ever this free people, if this Government itself is ever utterly demoralized, it will come from this wriggle and struggle for office, that is, a way to live without work."—*Globe*, 2d sess. 42d Cong., p. 2513.

<sup>1</sup> Washington Correspondence—*N. Y. Weekly Tribune*, March 16, 1861.

<sup>2</sup> The object and provisions of the bill were similar to those of the one defeated in 1856. *Globe*, 1st session, 38th Congress, pp. 1092, 2215; appendix, p. 182. Mr. Henry B. Adams, in *N. A. Rev.*, Oct. 1869, gives a very interesting account of the way in which it was carried out for a few years. The experiment met every expectation, eleven consular clerks were appointed and three promoted to consulships, but President Grant removed two of them to make room for political friends. No further appropriations were made.

tion all agitation of reform was laid aside until the close of the war.

To those familiar with President Johnson's previous attitude, there could have been little question as to how far he would support any efforts looking toward improvement. In 1846 he had advocated rotation in office in its most flagrant form.<sup>1</sup> In 1861 he had asserted that it was the right and duty of Southern senators to thwart every plan of the incoming administration, by rejecting all presidential nominations not advantageous to the South.<sup>2</sup> When, therefore, in 1865, he found himself at the head of a party with which he had no political affiliation, conscientious scruples did not deter him from using the patronage of the government to destroy the organization that had inconsiderately raised him to power, and to build up another favorable to the interests he represented.<sup>3</sup> The climax came in 1866, when he openly defied the power of Congress to check his course.<sup>4</sup> The

<sup>1</sup> *Ante*, p. 76, note.

<sup>3</sup> *Ante*, p. 86, note.

\* From April, 1865, to December, 1866, the number of removals made was as follows, being about twenty-five per cent. of the whole number of officers:

<b>Department of State—</b>						
Number subject to confirmation by Senate . . . . .						340
Number appointed during the recess . . . . .						17
<b>Treasury Department—</b>						
Number subject to confirmation . . . . .						973
Number of changes . . . . .						278
<b>Post-office Department—</b>						
Whole number . . . . .						709
Number of changes . . . . .						222
<b>Department of Justice—</b>						
Whole number . . . . .						202
Number of changes . . . . .						34

In the Interior Department 68 removals were made; the number of officers is not given.—Executive Documents, 2d sess., 39th Cong., No. 67.

"In his speech at St. Louis, Sept. 8, 1866, he had said: "I believe that one set of men have enjoyed the emoluments of office long enough, and they should let another portion have a chance. How are these men to be got out unless your Executive can put them out?—unless you can reach them through the President? Congress says he shall not turn them out, and they are trying to pass laws to prevent it being done. Well, let me say to you: If you will stand by me in this action; if you will stand by me in trying to give the people a fair chance—to have soldiers and citizens to participate in these offices. . . . I will kick them out: I will kick them out as fast as I can."—*Tribune Almanac, 1869*, p. 23.

country felt that a crisis had indeed come that demanded the labors of a "political Hercules."

Two courses were open—one, to lay the axe at the root of the deadly upas and destroy it root and branch; the other, to lop off the larger branches and expect the root and trunk to change their nature; to cut out the cankered sore that was corrupting the body politic, or to conceal the hideous sight from public gaze by clothing it in fresh garments. The first was a task long and difficult in proportion to the magnitude of the evil to be overcome; the second promised temporary relief, and answered better the ends of those who reaped profit from the ills of the government. The question was fairly put before Congress, December 20, 1865, when Mr. Jenckes, of Rhode Island, introduced into the House his first bill to reform the civil service.<sup>1</sup> A conscientious statesman, an able lawyer, a painstaking and industrious scholar, he had entered Congress in 1863 and been profoundly impressed by the marked difference between the civil service and that of the army and navy. An inquiry into the cause led him to study the history of other nations, to see if the same evils existed elsewhere.<sup>2</sup> Exhaustive research proved to him not only that they had existed in England, France, Belgium, and Prussia, but that they had been cured.<sup>3</sup> The result of these investigations was embodied in the plan presented to Congress. In a word, its object was to secure efficiency in the civil service by substituting for the public and private auction of government offices the system of competitive examinations employed in Western Europe. The battle for civil-service reform was fairly begun, but few recruits were enlisted, for no bounties were offered. In Congress, where

<sup>1</sup> Mr. Sumner was the first to suggest a measure involving competitive examinations and promotions on merit. He introduced such a bill, April 30, 1864. It was favorably criticised by the press, but other business in Congress prevented further action.—*Globe*, 1st sess., 38th Cong., p. 1985. Works of Sumner, viii., pp. 452-457.

<sup>2</sup> Speech of Feb. 6, 1867.

<sup>3</sup> Mr. Jenckes' investigations were ably supplemented by those of Mr. Patterson in examining the condition of our consular service (Report in Senate, July 2, 1868), and at a later time by the work of Mr. Andrews, U. S. Minister at Stockholm, who made a thorough examination of the civil service of Sweden.

the majority had plans of their own in regard to the civil offices, the bill was transferred from one committee to another, its consideration postponed time and again, its provisions regarded with sublime indifference by those who should have been its friends, sneered at by more than one prominent member, who asserted that our civil service was "the best in the world," and that its adoption would mean death to our republican institutions,<sup>1</sup> and finally, after more than a year's delay, tabled by a vote of seventy-two to sixty-six.<sup>2</sup> Another attempt a year later met with a similar fate.<sup>3</sup> Yet the advocates of the new measure were not discouraged. If it had not won a numerical majority in Congress, it had enlisted many warm friends, while the most independent members of the press represented by *The Nation* gave the measure from the first their unswerving support.

But Congress resented the imputation that it was not in favor of reform. "This particular measure," to quote a pleasantry of *The Nation*, had not met their approval; it was depriving them of one of their most useful tools for maintaining their own power. They would cure the evil by covering it up. Accordingly the same body that rejected the Jenckes bill, passed the Tenure-of-Office bill by an over-

<sup>1</sup> It is specially interesting to read Mr. Logan's opinion of the bill, especially when compared with his after-dinner speech at the reception given him in Boston, June 29, 1885, when he was glad to claim civil-service reform as "the child of the Republican party." When the Jenckes bill was under consideration, he maintained: "It is bad in theory, wrong in principle, opposed to the genius and spirit of our institutions and our people, and probably unconstitutional in its legal aspect. I regard the introduction of a bill like this, and the favor with which it has thus far been received by both parties and the press of the country, as one of the most alarming signs of the inauguration of a policy which, if persisted in, will end in the obliteration of all that is republican in this government, and the substitution of that which is monarchical in its stead. . . . When I read the report of the committee, . . . and find their whole plan is taken openly, boldly, and without disguise from monarchical governments, I cannot doubt what its results will be, if I could doubt the intention."—*Globe*, 3d sess., 40th Cong., p. 262.

<sup>2</sup> Feb. 6, 1867.—*Globe*, 2d sess., 39th Cong., p. 1036.

<sup>3</sup> The bill was introduced by Mr. Jenckes, March 23, 1868, and reported May 14th, but Congress adjourned without taking any action on it.—*Globe*, 2d sess., 40th Cong., pp. 2069, 2466.

whelming majority.<sup>1</sup> What were the essential differences? The plan of Mr. Jenckes was based on the acknowledged principle that it is easier to keep out incompetent servants than to dismiss them when once employed; it aimed to remove the cause of political corruption by doing away with all personal influence, bribery, and political patronage, to restore to the executive department the powers conferred upon it by the Constitution, but which had been usurped by Congress in claiming the privilege of recommending nominations. The Tenure-of-Office bill made no provision for securing capable officers, while it prevented the removal from office of any person without the consent of the Senate. Thus the trouble it was ostensibly designed to cure was immeasurably increased. Before this, the President alone had been held responsible for the removal or non-removal of officials; now, the President could shift the responsibility upon the Senate, and the Senate back upon the President, while the public had no umpire. The system of political "log-rolling," the bane of the service in securing office, was extended to removals, and genuine reform made more difficult than ever. Yet regarded in one light, the passage of the bill was not to be regretted. It has been seen how strong was the pressure in 1789, and again in 1835, in favor of giving the Senate a voice in removing officers. The act of 1867, though it must be considered as a part of the reconstruction policy of Congress, rather than as an attempt to reform the civil service, yet proved more conclusively than all previous arguments had done, the wisdom of the first Congress in denying that power to the Senate. The fallacy of the assertion so often made during the three months' debate, that they were "legislating for the future," was shown five days after President Johnson went out of office, by a vote in the House of 138 to 16 for a total repeal of the act.<sup>2</sup>

The Tenure-of-Office bill was accepted for what it was worth, and after the failure to convict President Johnson on

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<sup>1</sup> The bill was introduced into both houses, December 3, 1866, and passed over the veto March 2, 1867.—Senate Journal, 2d session, 39th Cong., p. 6., *Globe*, pp. 5, 1966.

<sup>2</sup> *Globe*, 1st session, 40th Cong., p. 40.

the impeachment trial nothing further was attempted, but all hopes were centred in the incoming administration. At no time since 1829 had there been so much to justify these hopes. President Grant entered upon his duties the unanimous choice of the Republican party, with a large majority of the electoral and popular vote, without political debts to pay, and with a reputation for courage and determination it would have been rash to question; he was understood to be in favor of reform, the principle of the Jenckes bill was growing in popularity, and the better sentiment of the country was anxious to support any measure that would lessen the power of professional politicians.<sup>1</sup> A year later, what had been accomplished? The Secretary of State first appointed had held office three weeks, but had not resigned until he had filled all vacancies in the department with political friends and made removals to accommodate others; of the remaining members of the Cabinet all but two were either indifferent or openly opposed to the reform; the Secretary of the Interior had begun a thorough reform in his department, and had introduced competitive examinations in the Patent Office and the Census Bureau, but in six months was forced to resign, because not protected against the politicians in his efforts; the foreign service was unchanged;<sup>2</sup> political assessments were levied with the most disgraceful effrontery;<sup>3</sup> a few earnest friends of honest ser-

<sup>1</sup> A petition is found, signed by three hundred citizens of Philadelphia, asking their candidates for Congress to support the Jenckes bill or something similar.

<sup>2</sup> See letters of W. B. Stillman, *Nation*, Feb. 18 and June 24, 1869. Also "Adventures of an American Consul Abroad," by Luigi Monti (founded on fact).

<sup>3</sup> Correspondence, Oct. 20-23, 1869, between Hon. J. W. Husted, Secretary of the Republican State (N. Y.) Committee and Gen. F. C. Barlow, U. S. Marshal. The former sent Gen. Barlow a printed circular asking for money to defray election expenses, the blank space being filled in with the words, "\$1,000 for yourself and subordinates." The latter replied, enclosing his check for \$120, saying that his salary was \$6,000, and he understood the assessment was two per cent. on that; he could not impose assessments upon his deputies or collect them. The reply came: "The great discrepancy between the amount of the check and the amount asked for by the committee, would render it, in the opinion of the committee, an act of great injustice to the other government officials who have already responded to the calls made upon them, to accept in

vice were beating the air in their attempts to fix the responsibility *somewhere*, without making a change in the system,<sup>1</sup> while the Jenckes bill again introduced was recommitted to save it from total defeat.<sup>2</sup> The country was amazed, but remembered that the Tenure-of-Office bill had been partially repealed,<sup>3</sup> and trusted the spirit of the President's second annual message, urging the necessity of civil-service reform, not only in the tenure of office, but as to the manner of making appointments so as to relieve the chief executive officers. More dissatisfaction might have been expressed, but the feeling was growing that the executive department was not wholly responsible for the lamentable and unexpected failure; that the real foe was after all not the President, but Congress. All open attempts to pass any measure that would lessen the influence of its members by instituting competitive examinations were persistently voted down or ignored. It was not until March 3, 1871, that the friends of

its present shape your contribution. I, therefore, by order of the Executive Committee, return the check to you, expressing the hope that you will reconsider the views expressed in your communication." The postscript is: "The assessments made upon the government officials in the State are *not* made upon a basis of two per cent. upon their salaries, but upon the ascertained incomes of their respective offices." Gen. Barlow replied, refusing to change his views, and, stating that the check for \$120 was at the service of the committee if they saw fit to accept it. The letter was returned to the writer without observation, and the check never called for.—*Nation*, Nov. 17, 1870.

<sup>1</sup> Senator Trumbull was specially zealous in advocating a bill introduced by him Dec. 7, 1869, making it a penal offence for members of Congress, directly or indirectly, to solicit or recommend the appointment of any person to office by the President or heads of departments.—*Globe*, 2d sess., 41st Cong., p. 17. Similar bills were frequently introduced, and always voted down or passed over by those who realized that unless a system of examination was introduced, the President must receive information from some source, and all such bills would merely transfer the patronage into the hands of a still more irresponsible class.

<sup>2</sup> *Globe*, 2d sess., 41st Cong., p. 3261.

<sup>3</sup> The House, under the leadership of Gen. Butler, voted at every session for its total repeal, while the Senate as persistently refused to concur. A compromise was agreed upon, by which the President was released from obligation to give reasons to the Senate for the removal of officers, and a person suspended was not reinstated if the Senate did not concur in the suspension by consenting to the appointment of another officer. The act was approved April 5, 1869.—*Globe*, 1st sess., 41st Cong., appendix, p. 37. President Grant advocated in his first message the repeal of all tenure-of-office acts.

reform succeeded in passing a measure in its favor as a rider to the appropriation bill. It gave the President authority to prescribe rules for admission into the civil service, and to appoint persons to conduct inquiries. Mr. Jenckes had drawn up the amendment, Mr Trumbull introduced it into the Senate, and the House adopted it under protest in order to save the appropriation bill. After more than five years of agitation, at least a beginning had been made. The entire responsibility of honestly carrying out the measure rested with the President, and those who had objected to the various Jenckes bills as freeing him from all care in regard to appointments had no cause for complaint. It was several months before the commission was appointed, but the name of George William Curtis at the head gave guarantee that the duties of the board would be faithfully carried out. The third annual message of the President, December, 1871, offered an excuse for the appointment of bad men to office by charging it to the system established by law and custom, and to the fact that many recommended others to office without knowing their character, or without a sense of the grave responsibility incurred. He urged a law making all indorsers of persons for public place accountable for those whom they recommended, and also an appropriation for the support of four American young men in China and also in Japan, in order to add to the efficiency of our diplomatic service there. A special message, two weeks later, transmitted the report of the civil-service commission, and stated that the rules recommended by them would go into effect January 1, 1872, and be faithfully executed by him. The politicians were furious,<sup>1</sup> the reformers jubilant<sup>2</sup>—the reform was fairly under way, even if it had escaped from port under cover of a rider and the expenses of the trip paid in a similar way. An executive order of April 16, 1872, approved the further recommenda-

<sup>1</sup> A subsequent candidate for the Vice-Presidency insisted that it was "the most obnoxious bill of the character which has come before this House."

<sup>2</sup> Mr. Garfield said: "I am exceedingly glad that we are able at last to give for the first time in the history of this government a legislative expression in favor of civil-service reform."—*Globe*, 3d session, 41st Cong., p. 1935.

tions of the commission, announced that political assessments had been forbidden within the various departments, and that "honesty and efficiency, not political activity," would determine the tenure of office, while the Attorney-General upheld the constitutionality of the act.<sup>1</sup> The political managers saw the direction of the wind and tacked accordingly—none were so zealous for reform as they. A large number of the State platforms of 1872, and the national platforms of all parties declared in favor of reform.<sup>2</sup> Never before had there been so many resolutions and bills, for and against, introduced into Congress. The President's fourth annual message again expressed a desire to correct abuses in the civil service, and a hope that the experience of the year under the act of 1871 would enable Congress to reach a satisfactory solution of the question and make the enforcement of the reform binding upon his successors; an executive order of January 17, 1873, prohibited civil officers of the United States from holding State or Territorial office, while the second inaugural reiterated the interest of the President, and assured the nation that the spirit of the rules would be maintained. It was hard to turn from the bright picture thus created to the stern reality. Success in the presidential campaign had cooled the ardor of these reformers for a day,—there was an ominous silence in Congress, and the meagre appropriation of \$25,000 a year, voted in 1871, to carry out the act, was discontinued after two years. It was hard to reconcile the earnest protests of the President in favor of the rules with the neglect of their spirit. Early in the spring of 1873 Mr. Curtis had resigned his position as chairman of the commission, as he was led to believe from the manner in which important positions had been filled that the President had abandoned the policy he had advocated, and he was unwilling longer to lend his influence to the commission.<sup>3</sup> Every thing gained seemed lost, and the

<sup>1</sup> Opinions of Attorney-General, v. xiii., pp. 516-525.

<sup>2</sup> McPherson's "Handbook of Politics," 1872.

<sup>3</sup> The occasion was the resignation of Mr. Cornell as surveyor of the port at New York. The gentleman who had been deputy-surveyor for many years was nominated to succeed, but a week later the nomination was withdrawn. The

agitation of nearly ten years must be renewed from the beginning. Hope was kept alive by the appointment of Mr. Dorman B. Eaton to succeed Mr. Curtis, by an occasional appointment like that of Mr. Thomas L. James as postmaster of New York, the extension, by executive order of August 31, 1874, of the civil-service rules to Boston, and the encouraging report of the civil-service commission. But the annual message of the President, December 7, 1874, announced that he could only interpret the failure of Congress to legislate on the subject as a disapproval of the system, and that it would therefore be abandoned.<sup>1</sup> That it had not been wholly unacceptable outside of Congress seems proved by the fact that the attempt made by Mr. Bristow within his own department was almost solely what had given his name a prominent place in the list of presidential nominees in 1876. Let the effect of the failure of ten years be told in the words of one who stood high in office. Said Mr. Hoar, during the trial of Wm. K. Belknap: "My own public life has been a very brief and insignificant one, extending little beyond the duration of a single term of senatorial office. But in that brief period, I have seen five judges of a high court of the United States driven from office by threats of impeachment for corruption or malad-

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announcement was made that the appointment would be made under the rules, but instead it was given to the marshal of the district, who was an active politician.—Newspapers of the time.

<sup>1</sup> He says: "The rules adopted to improve the civil service of the government have been adhered to as closely as has been practicable with the opposition with which they meet. The effect, I believe, has been beneficial on the whole, and has tended to the elevation of the service. But it is impracticable to maintain them without direct and positive support of Congress. Generally the support which this reform receives is from those who give it their support only to find fault when the rules are apparently departed from. Removals from office without preferring charges against the parties removed are frequently cited as departures from the rules adopted, and the retention of those against whom charges are made by irresponsible persons, and without good grounds, is also often condemned as a violation of them. Under these circumstances, therefore, I announce that if Congress adjourns without positive legislation on the subject of civil-service reform, I will regard such action as a disapproval of the system, and will abandon it, except so far as to require examinations for certain appointees to determine their fitness. Competitive examinations will be abandoned."

ministration. I have heard the taunt, from friendliest lips, that when the United States presented herself in the East to take part with the civilized world in generous competition in the arts of life, the only product of her institutions in which she surpassed all others beyond question was her corruption. I have seen in the State of the Union foremost in power and wealth, four judges of her courts impeached for corruption, and the political administration of her chief city become a disgrace and a by-word throughout the world. I have seen the Chairman of the Committee on Military Affairs, now a distinguished member of this court, arise in his place and demand the expulsion of four of his associates for making sale of their official privilege of selecting youths to be educated at our great military school. When the greatest railroad of the world \* \* \* was finished, I have seen our national triumph and exultation turned to bitterness and shame by the unanimous report of three committees of Congress \* \* \* that every step of that mighty enterprise had been taken in fraud. I have heard in highest places the shameless doctrine, avowed by men grown old in public office, that the true way by which power should be gained in the Republic is to bribe the people with the offices created for their service, and the true end for which it should be used when gained is the promotion of selfish ambition and the gratification of personal revenge. I have heard that suspicion haunts the footsteps of the trusted companions of the President. These things have passed into history."<sup>1</sup>

Why had the work failed so disastrously? First, there was a popular fallacy that the reform could be brought about by the Executive alone. The rank and file of the party in power were unquestionably in favor of the reform, but they forgot that "eternal vigilance is the price of liberty," and that the duty of bringing it about devolved upon each individual; that the Executive did not constitute the party, but was only a single member of it, and often, in the words of Mr. Lincoln, "had very little influence with the administration." Second, the "middlemen," who were to

<sup>1</sup> *Congressional Record*, vol. iv., pt. 7, p. 63.

strengthen the hands of the Executive and to legislate for the people, were, as a rule, opposed to any and all measures that threatened to take away so large a share of their power. The appointing power had literally been handed over to them, and was not to be surrendered without a death-struggle. The defection in the party ranks in 1872 had warned them that they stood on dangerous ground, but success in the election had only served to tighten their hold upon the spoils, and the mask they had assumed as "reformers" was soon cast aside. Third, the President had in civil life reversed the reputation gained in military career, and become, as regards the reform, a man of words, not of action. While it had been impossible for him to do every thing, and unjust to expect it, it is hard to escape the conviction that more might have been accomplished. A ready excuse for the nepotism and personal favoritism shown in appointments was found in the kindness of heart that prompted them, but it was a surprise that the hero of the war had surrendered so soon to the politicians of the day. It is perhaps going too far to say, as has been done, that his course in abandoning the reform can no more be justified than the surrender of Mr. Webster to the slave power, yet the chapter in President Grant's history which his best friends would be most glad to alter, is entitled "the civil service."

The defeat was not irretrievable, and the opponents of the spoils system marshalled their forces for an attack from a different quarter. Civil-service reform associations were beginning to be formed in various localities, requests were sent to candidates for nomination to Congress to ascertain their views on the subject, leading political clubs adopted resolutions pressing the necessity upon the national nominating conventions,<sup>1</sup> and the prominence of more than one candidate

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<sup>1</sup> Notably the Union League Club of New York, composed of twelve hundred members, who represented the highest intelligence of the Republican party in the city. Its resolutions of March, and especially of May, 1876, urged the subject of reform. The Republican Reform Club at the Fifth Avenue Hotel Conference expressed in the strongest possible terms the imperative duty of vigorously carrying forward "such a thorough and systematic reform of the civil service as will bring the several departments of the Federal Government within their

in the conventions of both parties was due to his supposed interest in the movement. Both party platforms contained a civil-service plank ; each nominee declared that if elected he would promote all efforts for reform, and Mr. Hayes in his inaugural urged it "not merely as to certain abuses and practices of so-called official patronage, \* \* \* but a change in the system of appointment itself ; a reform that shall be thorough, radical, and complete ; a return to the principles and practices of the founders of the Government." An examination was soon made of the system on which the New York custom-house was conducted, the Secretary of the Interior introduced the system of competitive examinations into his department, an executive order of June 22d prohibited political assessments, and all officers from taking part in the management of political organizations, the foreign posts were filled with unusual credit to the country, and the President's first annual message urged an appropriation to carry out the work of the civil-service commission, which still had a legal existence. But the course of President Hayes in following out his own instructions seemed inconsistent. Honors were conferred upon unknown men and personal friends, as well as upon some who had been foremost in the questionable events connected with the action of the returning boards.<sup>1</sup> The Naval Officer of New York did not resign the position he held, as he should have done under the executive order of June 22d, and months afterward was removed, not on that ground, however, but because the custom-house needed reorganization under new men. The Collector at New York was removed under similar circumstances, but offered the consulate at Paris. There was certainly point to the sarcasm that the President desired every one to be a reformer except himself. But much was certainly accomplished if only in the way of giving encouragement to the movement. In the New York post-office,

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true sphere under the Constitution, and restore honor and efficiency to official life." A letter of Mr. Dorman B. Eaton to Hon. J. D. Lawson, a delegate to the Cincinnati Convention, is of interest in the same connection.

<sup>1</sup> *The Nation*, Jan. 1, 1880, has a list of sixteen receiving salaries from \$4,500 down.

which, with one or two exceptions, had been controlled by politicians since 1829, and where the frauds had been so proverbial that reform seemed almost out of the question, new measures had been introduced which proved eminently successful,<sup>1</sup> and finally a system of competitive examinations and promotions on merit. The rules were approved by the President and the Postmaster-General and ordered to go into effect May 1, 1879. Copies were sent by desire of the President to all the postmasters and collectors of the principal cities in the Union with a request for their adoption. Letters were subsequently sent to these various officers asking their opinion as to their worth, and the answers received showed that in nearly all cases the rules had been adopted and won the most unqualified approval.<sup>2</sup> The condition of the New York post-office in a measure influences the postal service of the entire country, but not to the same extent as does the custom-house, where a larger business is carried on than at any other port in the world. Duties on merchandise to the amount of \$550,000,000 are annually to be estimated, and thirteen schedules of rates enumerate duties on twenty-five hundred different articles. Eight hundred and twenty-three articles pay ad-valorem duty, five hundred and forty-one specific rates, and one hundred and forty-four are subject to compound rates. Those chosen for the successful management of this most intricate business had in general been those who had done most to carry the city or State elections, and their subordinates were removed or appointed for similar reasons,<sup>3</sup> while the Government had paid into the hands of the spoils-men three times as much as did France for the same amount of service, four times as much as Germany, and five times the amount paid by Great

<sup>1</sup> Very important and conclusive testimony as to the efficiency of these measures is given in a letter to Rev. G. L. Prentiss, written Feb. 23, 1877, by Mr. Theodore Karner, Superintendent of one of the branch stations. So much had been accomplished, that "a return to the former system would hardly be tolerated."

<sup>2</sup> Executive Documents, 2d sess., 46th Cong., No. 8.

<sup>3</sup> During the years 1866-71 removals in the office had been made at the rate of more than one a day.

Britain.<sup>1</sup> If a reform could be accomplished in a place so given over to party managers, nothing was impossible. The attempt was made April 3, 1879, when competitive examinations were introduced, and the good results experienced there as well as at the post-office added the weight of experience to the theoretical arguments of previous years.

The President's message of 1879 was the most important executive communication that had been made with reference to the subject. The good results of the system as far as tried were shown, but the fact was clearly pointed out, as had been repeatedly done for ten years, and proved by experience, that nothing permanent could be accomplished without adequate legislation by Congress and hearty support among the people. Unless the tenure-of-office acts could be repealed, political assessments prohibited by law, the statutes already enacted revised and extended, and sufficient appropriations made, it would be impossible to secure substantial results. Undaunted by lack of appropriations the Civil-Service Commission had been prosecuting their work, and, at the request of President Hayes, Mr. Eaton had made an exhaustive historical study of the civil service of Great Britain. The results were embodied in an elaborate report,<sup>2</sup> transmitted to Congress with the annual message, in which the past and present condition of the service there was most ably presented. Continuing in a more comprehensive manner the work begun by Mr. Jenckes, it showed most emphatically that a civil service corrupted for two hundred years had been so changed that a complete transfer of power from one party to another produced scarcely fifty changes throughout the civil administration. It gave a practical answer to the objections raised against competitive examinations, and did more than any thing had up to this time for the general enlightenment of the country on the fundamental principles of reform.

But party managers, especially those of "the ins," were still unmoved. The Republican platform of 1880 approved

<sup>1</sup> Statistics from D. B. Eaton, *Publications of Civil-Service Reform Association*, No. 3.

<sup>2</sup> Republished as "Civil Service in Great Britain."

of the reform only by an amendment to the resolutions, and refused to endorse the principle that tenure of office should be made permanent during good behavior.<sup>1</sup> In Congress not a single bill of importance was even introduced until December, 1880, when the Pendleton bill was first presented. President Hayes' administration had therefore left the service unchanged as regards methods of appointment, though the weight of its influence had been cast in favor of reform, the service purified under old legislation, and a strong impetus given to popular education.<sup>2</sup>

President Garfield's letter of acceptance was unsatisfactory in regard to the civil service as was also his inaugural, but it was not necessary to rely upon these for a knowledge of his views. In his first speech in Congress on the subject (March 14, 1870,) he had exposed unflinchingly the main cause of the corruption by saying: "We go man by man to the heads of these departments and say, 'Here is a friend of mine, give him a place.' We press such appointments upon the departments; we crowd the doors; we fill the corridors. Senators and Representatives throng the offices and bureaus until the public business is obstructed; the patience of officers is worn out, and sometimes for fear of losing their places by our influence they at last give way and appoint men not because they are fit for their positions, but because we ask it." His speeches<sup>3</sup> show how repeatedly he had urged Congress to take action, saying that "the one thing absolutely necessary" was that it should "abdicate its usurped and pretended right to dictate appointments to the Chief Executive." (April 19, 1872.) He had had only

<sup>1</sup> McPherson's "Handbook of Politics," 1880.

<sup>2</sup> Remarkable interest was shown in the formation of a society for the publication of civil-service reform pamphlets.—Correspondence columns of the *Nation*, July—December, 1880. Petitions in favor of reform recalled the anti-slavery days. Apparently the ball was set in motion by a petition presented January 24, 1881, from five citizens of New York. It was immediately followed by others, and within a year many had been sent in signed by thousands of names. A single volume of the *Congressional Record* has fifty-six petitions, sent by every class in society and from twenty-two different States, asking for thorough legislation on the subject.—*Record*, vols. xi.—xiii.

<sup>3</sup> Works, vol. i., pp. 499—519.

scorn for those who shielded their opposition to the reform behind the weak defence that it was unconstitutional, that the interests of the party opposed it, and that the service was so good that it was unnecessary. In 1873, when the Committee on Appropriations had failed to insert a section for the payment of the Commission, he had plainly said that many things in the measures introduced had seemed to him trifling and schoolmasterly, yet he implored the House not to throw them "back into the abuses of the past and abandon all hope or purpose of doing any thing better for the future." He had justly complained that all who inveighed against the measures attempted, offered nothing in their stead, and urged the House to support the plan begun as an experiment, unless they wished to abandon all efforts to purify the service. All these utterances of ten years were the best evidence needed of his interest in whatever measure would correct the abuses of the appointing power, or assist the right exercise of it. No man in public life had given such assurances in a position where his sincerity could be so unquestioned, and it was to them, rather than to the conservative expressions of the President-elect, that the public trusted.

It was unfortunate that the condition of the party in power was such that concession to the two factions seemed necessary. The composition of the Cabinet gave evidence of it, but the reform element had a strong representative in the person of Mr. James, the Postmaster-General. It was noteworthy as being the first time a Cabinet position had been conferred as a promotion well earned by important service in the same department. Less was known of the attitude of the other members of the Cabinet, and disappointment was especially felt at the President's choice of a successor to Mr. Schurz, when it was known that he abandoned, without trying it, the plan of competitive examinations that had been so successfully conducted in the Interior Department. There was disappointment also that the President used the weapons of the spoils-men to deal a crushing blow at the "courtesy of the Senate." Ever since 1789 the weight of

authority had been in favor of giving the President the power of removal, but the vulnerable point in the argument had always been that it could be so used as to remove one person without cause for the sake of giving the place to another. No act of Congress was necessary to assist the President here, as the exercise of the power of removal was clearly within his own discretion. When now it was used to remove the Collector of New York, against whom not only no objection could be raised, but who had been identified with Mr. James in the work of practical civil-service reform, in order to confer the position upon a political friend, and gratify a member of the Cabinet, it was felt that the act could not be justified. But if the means employed were not the wisest, the end gained was clearly a milestone that marked a return to the theory of the Constitution. The attempt of the New York Senators to demand a voice in the selection of officers within the State, was rebuked by the President and the State Legislature in a way that would seem to make a similar attempt impossible in future. It was fitting that the rebuke should be given by a President who, as a member of Congress, realized more clearly than any previous Executive could have done to what magnitude the evil had grown. President Garfield's short term had brought much encouragement, though disappointment as well. When the circumstances of his death were known, the public drew instantly the only conclusion possible, and the one that history must always find, that it was only a result of that system which placed the Chief Executive of a powerful nation at the mercy of every disappointed beggar for office. It seemed as if the solemn experiences of the summer of 1881 must lead to the reform so earnestly sought by the many who were powerless in the hands of the few to accomplish it. But there were grave apprehensions when it was remembered that President Arthur had, during his public life, been associated most intimately with those whose names were synonymous with the spoils system. These apprehensions were, happily, not realized, and though the appointments made by him were, as a rule, confined to persons who

represented a wing of his own party, or his own geographical locality, yet, in the main, satisfaction was felt with the administration.

It was hard to dislodge the spoils-men from their stronghold. Public opinion had been unanimous in condemning the action of the New York senators, in seeing in the assassin of the President only a personification of the spoils system, and in censuring the political assessments levied by a national party committee during the summer of 1882. All these things were not without effect, and contributed much to secure the passage of the Pendleton bill, which received the President's signature, January 16, 1883. It was in principle essentially the same as the numerous bills introduced by Mr. Jenckes fifteen years before, and like them was drawn largely with reference to the experience of Great Britain in reforming her civil service. Though a reform measure, it was conservative in character, was applicable to a small number of offices, did not deal with the question of tenure of office, and it was hoped that public sentiment would in time demand its extension to the entire civil service. Those who have hoped most from it believe that its passage marks the beginning of a new era in the history of the appointing power as clearly as did the election of General Jackson in 1829.

## VIII.

### CONCLUSION.

THREE clearly defined periods are to be noticed in the history of the subject; the first, one of forty years, from 1789 to 1829; second, one of nearly equal length, from 1829 to 1861; third, from the outbreak of the war to the present time. They may be called the merit period, the spoils period, and the reform period. Each has its own sharply-marked characteristics, yet each contains the germ of the special features of the succeeding age. During the first period, the ten administrations were practically one. The executive chair was filled by men of practical statesmanship; their profound and voluminous works on political subjects attest their mastery of the theory of government, while each had a life-long training in the public service. Though each differed widely from the other in personal traits, though they represented political parties far more diverse in policy than those of the present day, though one of these parties had been hopelessly rent by internal dissension and a political revolution had resulted in the complete triumph of the opposite side, though a war had been begun and prosecuted by one party in defiance of the bitter hostility of the other, though questions of the greatest moment concerning domestic policy were discussed with increasing zeal, yet in no case had an Executive sought to promote his own or his party's ends by trading in public office; never was the efficiency of the public service in any way lessened by internal or external political changes and difficulties. Washington had sternly rebuked unjustifiable interference in the nomination of officers;<sup>1</sup> Jefferson had frowned upon nepotism, and his

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<sup>1</sup> "Works," x., pp. 399-400, correspondence with Mr. Monroe in regard to the appointment of Alexander Hamilton as Minister to England.

three questions—"Is he honest, is he capable, is he faithful to the Constitution?"—are the corner-stone of good service; Madison believed a misuse of the appointing power a just cause for impeachment; Monroe had not deviated from the course of his predecessors; while John Quincy Adams had been willing to sacrifice a second term by strict adherence to the early policy. Two things, therefore, had combined to render the civil service efficient and keep it free from partisan control: first, the high character of the Executives, which placed them beyond the temptation to abuse their power; second, the fact that offices were few in number, and it was possible for the President to appoint with full knowledge of the character of the one employed. But the skeleton was in the closet, placed there by the political "machine" invented by Aaron Burr and perfected by the followers of William Crawford. It had entered the door, May 15, 1820, clothed in the garb of sanctity and official purity, and though a few had instantly detected the hideous form beneath the fair exterior, its true character had escaped the eye of President Monroe. The Four-Years' Limitation law was ostensibly designed to secure strict accountability on the part of revenue officers; practically it was to render every officer connected with the Treasury Department a devoted servant of Mr. Crawford, its head, in his aspirations for the Presidency. Never, in the whole history of the legislation of a hundred years affecting the appointing power, has so disastrous a measure been enacted. Never, when the spoils-men had complete control of executive and legislative departments, could they devise an act that would so well serve their purpose. Hitherto it had been necessary for the one appointing to consider only new officers; the new law made it necessary to act every four years upon a large number of inferior officers, for the use to which it could be put soon secured its extension to other departments. But the added cost of time was of small moment compared with the element of corruption introduced. The power of removal had been jealously watched; now a direct exercise of the power seemed almost unnecessary; a name could be dropped from

the list at the expiration of a commission and the vacant place filled at pleasure without incurring the charge of removing an officer. Under color of law, therefore, every appointing officer could traffic in place as suited his purpose, while, on the other hand, all the crowd of anxious, fawning office-seekers were put on the alert, hoping that every turn of the wheel would throw out some one whose place they could fill. Both Mr. Monroe and Mr. Adams executed the law in strict observance of its nominal intent, but the leaven of the spoils period was at work.

The two conditions that had given a pure service for forty years were conspicuously absent during the second period. As regards the Presidency, it became the refuge of "available candidates," "favorite sons," and "heroes of a hundred battles," while the number of offices which had been kept within reasonable limits during the first period was suddenly swollen from fifty-five thousand in 1829 to more than a hundred thousand eight years later, though the population had increased but twenty-four per cent.<sup>1</sup> With the conditions of the early period reversed, it was not surprising that a change in the service came. The system of reward and proscription that had flourished for half a century in New York State politics, was transferred by the fostering hand of President Jackson's Secretary of State to the Federal Government, where it found congenial soil. Those high in authority explained, "The government must be administered by its friends;" Senator Marcy threw off the mask and cried, "To the victors belong the spoils!" while the people translated the thought of the politicians into the vernacular, "Uncle Sam is rich enough to buy us all a farm." Government service was literally regarded as a legitimate field for plunder and the executive departments were admirably adapted for it. The departments of War, the Navy, and Justice afforded less opportunity for the spoils-men, but those of State, the Treasury, the Interior, and the Post-office were attractive places.

In the Department of State certain qualifications had

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<sup>1</sup> Mr. G. W. Curtis, in *Unitarian Review*, Nov. 1878.

been considered essential in its subordinate officers, that the dignity of the Government might be maintained abroad; a knowledge of French was indispensable, and every additional language was of assistance, an acquaintance with general European history, especially with its diplomatic history, and an address that evidenced high birth or position in society. John Quincy Adams and Albert Gallatin had been the typical diplomatists of the early period. During the spoils period, a person who had aspired to a seat in the Cabinet, or been unsuccessful in the race for Congress, was consoled for his defeat with a consulship or diplomatic post, and thus his allegiance to the party preserved. It had been said in Rome, by a leading patrician, that he desired a pro-consulship for three years, the first that he might pay the debts contracted in obtaining the office, the second that he might lay up sufficient means to maintain himself at ease for the rest of his life, and a third year to secure enough to bribe the judges on his return. During the spoils period the opportunity to make a similar use of office was at least presented, when a consul found himself expected to maintain, on a salary of fifteen hundred dollars, the same social state as his predecessor, who had spent fifty thousand dollars a year of his private fortune. "Economy" and "retrenchment" were the cries that had caught the popular ear, but a false economy too often resulted in the degradation of the service, and led to difficulties that increased the demands upon the Treasury. The attempt made at the close of the period by Secretary Marcy to undo in the department what was, in a measure, the result of his own work, was in every way a worthy one, and it is to be regretted that the plan has not been permanently established. The ordinary professions and business occupations recognize the necessity of training and are willing to pay for it according to its worth. The spoils period made the foreign service a trade that any man could take up as a pastime, and while legitimate compensation was kept at the lowest possible rate, it could attract few persons having natural ability for the work. Through the consular service, opportunities are con-

stantly presented for benefiting the commercial interests of the United States, and it is unpleasant to reflect how many avenues of trade now closed might have been opened had we had for thirty years the trained and experienced consular clerks once suggested.

The Treasury Department had doubtless afforded the best opportunity for its officials "to make the most of their time," to use the current phrase. How well some of them improved it, the names of Swartwout and Hoyt suggest. It seemed the peculiar irony of fate that the most notorious defalcations in official history should come to light during the administration of President Van Buren, who had done so much to spread the political methods of New York, and had apparently made no attempt to undo the evil. There would seem to be no reason for exempting the Treasury officials from the ordinary qualifications of business men; yet the spoilsmen saw no inconsistency in appointing a farmer an appraiser of silks, or a tradesman an inspector of ships, or a teacher collector at an important port. When the "irregularities" of the collector at New York amounted to a million and a half, it was not surprising that the infection spread through the lower ranks, until men were ready to offer five thousand dollars for the influence that would secure a position in the revenue service where fifteen hundred dollars was all that could be legitimately earned in a year, and a change in administration would probably bring removal within twelve months.<sup>1</sup>

If the Treasury Department offered the most opportunities to party managers, some of the bureaus of the Interior Department were no less inviting. The Indian agencies in particular, remote from official centres, and practically irresponsible, were eagerly sought by frontier men who had been successful politicians. Just how success in that field promised success in arranging Indian complications and avoiding conflicts between the settlers and the various tribes was never explained. The result of making such appointments, solely from political considerations, has been seen in the

<sup>1</sup> *N. A. Rev.*, Jan., 1871.

hostility of the Indians toward the Government, and too often every white man has seemed to them a means of fraud and oppression. Even difficulties that originated elsewhere were constantly aggravated by the conduct of persons who were nominally Government employés, but in reality party servants.

The Post-office Department had been established without political considerations, and kept free from partisan control. But President Jackson's administration had seized it as a powerful weapon to be used in their interests. Every one of the five hundred postmasters removed by him had been succeeded by a politician, only too ready to be the centre of a political clique. When the Four-Years' Limitation law had been extended to postmasters, the importance of the enormous patronage thrown into the hands of the Postmaster-General was recognized, and wholly on that ground he was invited to a seat in the cabinet. Though the disadvantage of frequent change was felt in this department more than elsewhere, corruption on the part of officials was comparatively rare, though the possibilities presented in some localities the recent Star-route frauds attest. It is difficult to say whether the frequent attempts in Congress to make the office of postmaster an elective one arose from a desire to make it still more political in character, or seemed a means of lessening party control.

There was scarcely an Executive during the period who did not place himself on record as favoring such use of the power as would secure a pure and efficient service, but in practice nearly all cast in their lot with the spoils-men. General Jackson opened the door to them, Mr. Van Buren was hand in glove with them, and Mr. Tyler attempted to build up a new party through their help. Neither General Harrison nor General Taylor had been able to withstand their influence, while Mr. Polk and his successors adopted their policy without disguise. Congress at first protested, but proposed nothing that would not have increased the evil, and the majority soon went over to the other side, and openly avowed the spoils principle. It was far easier to let down

the bars than to put them up again. The Federal Government had been taught the lesson by a State ; it in turn became the teacher of others until rotation was almost unconsciously adopted as the fixed policy, not only of every State but of the cities and towns of all sections. In a generation that prided itself upon its "practical" ways, the logical effects passed unnoticed. No man refused to accept his morning mail from a postman who did not agree with him in regard to internal improvements made at government expense, nor did he welcome the tax-gatherer more cordially because a believer in his favorite hobby of free trade, nor think twice before sending for a fire company, every member of which disagreed with him in regard to a national bank, nor hesitate to summon a policeman who was a Know-Nothing, though himself a bitter enemy of the organization. No one organized a raid on the business of a successful grocer, on the plea that he had enjoyed the emoluments of trade long enough, and that some one else needed the store. No company of "workers" demanded that a leading banker should dismiss a teller of ten years' experience in order to employ a person who had voted the straight ticket. No railroad president was urged to dismiss a hundred conductors and employ instead a disbanded company of Mexican soldiers. No proprietor of the Fifth Avenue Hotel was threatened with loss of patronage in case he refused to discharge his waiters in favor of one-armed soldiers whose terms had expired. No man was recommended as a college president because he had been successful as an internal-revenue inspector. Yet practically the same absurdities were committed day after day in local, State, and Government service. Not only was allegiance to the party in power made the paramount qualification for the ordinary executive positions, but the care of the insane, the blind, the deaf and dumb, the feeble-minded, of all free educational and charitable institutions, was made to turn upon the same faithfulness to party. The very word "patronage," which almost came into use during the period, carried with it the old Roman idea of the claim which a patron had over those whom he had freed.

The change of terms from "the appointing power" of the early period to "executive patronage" of the second, was significant if unconscious. The claim was easily maintained by threat of dismissal, or by political assessments, but though the yoke of the patron was galling complaints were silenced.

But as the Four-Years' Limitation law foretold in clear weather the coming storm, so in the darkness of the spoils period there were glimpses of coming day. Mr. Calhoun's patronage bill, in 1835, which provided for the repeal of the act of 1820, had been carried in the Senate, though not brought to vote in the House; Mr. Webster, as Secretary of State in 1841, had attempted to prevent such abuse of patronage as interfered with the freedom of elections, while pass-examinations had been established, and a plan laid for consular pupils. Expression, too, had been given in a crude form to the idea that the service had outgrown the President's power of control. As early as 1838 the Legislature of Connecticut had sent a resolution to Congress asking for an amendment to the Constitution providing that the power of nominating, appointing, and removing all officers of the United States, except those of the army and navy and ambassadors, public ministers, and consuls, should be taken from the President, and exercised in some other way.<sup>1</sup> The spoilsmen had in no way been shorn of their power, but the germs of reform were there.

The period from 1861 has been spoken of as one of reform, yet many of the worst features of the spoils period have found their culmination here, and new difficulties been presented. The war enormously increased the number of offices, and at its close the spoilsmen, under the guise of "the soldier's friends," demanded all offices for those who had been connected with it. The influence of members of Congress in securing positions for their constituents became so great that instances were known where members kept a debt and credit account with heads of departments. Masquerading as the "courtesy of the Senate," it formed one of the most conspicuous instances of the imperceptible way in

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<sup>1</sup> Senate Docs. 2d sess., 25th Cong., vol. vi., No. 489.

which the Constitution has been amended. The Convention at Philadelphia, which had so carefully separated the legislative and executive departments, would not have recognized the work of their own hand in the claim that culminated in the Conkling episode of 1881. Every President after 1869 reiterated his desire so to use the appointing power as to give satisfaction to the public, but each signally failed. Not only had individual members of Congress thwarted all efforts at reform by claiming unconstitutional privileges, but Congress as a body persistently refused to give relief. The great change in circumstances since 1789 had not been met by corresponding change in legislation. The child's dress was not only too small for the grown man, but even when cut after a larger pattern gave only a grotesque appearance. A change of terms again gave tacit acknowledgment of the change in situation—legislation was no longer proposed affecting "the appointing power," or "executive patronage," but "reform in the civil service." If the President apparently could not act, Congress would not. For nearly twenty years, a few disinterested members brought every influence at their command to bear upon the reform. Their plans were scoffed at as "impracticable," "unbusiness like," "unconstitutional," "undemocratic," and it was boldly asserted that no party could succeed without subsidizing its adherents. The majority were willing to dabble in reformatory measures just enough to throw the public off its guard. Patience was at last exhausted. The spoils-men, like the pro-slavery advocates, had cried "Peace, peace, when there was no peace." As the Dred Scott case had aroused the North from their torpor by opening their eyes to what was only the natural result of all their legislation in behalf of slavery interests, so the Conkling case and the assassination of President Garfield showed that the battle for reform must be fought at once and with new weapons. Reform associations, tracts and various publications, petitions to Congress, all showed how thoroughly the intelligent classes were aroused. When the reform was a foregone conclusion, each party claimed the honor of originating it as,

"Seven wealthy cities claimed great Homer dead,  
Through which the living Homer begged his bread."

Individual leaders became as anxious to reconcile their previous position with the successful reform as have been others their prophecies of the destruction of the Union with the happy termination of the war. The partial reform, therefore, has been the result of twenty years' agitation, brought about in spite of party organizers and intended, not to usurp in any way executive power, but by appropriate legislation to supplement the power conferred by the Constitution as the first Congress supplemented it in 1789.

Though the period has indeed been one of reform, though a practical civil-service bill has been passed, political assessments partially done away, and a temporary check given to the "courtesy of the Senate," yet after all it has been but an entering wedge. The Four-Years' Limitation law is still on the statute-books; the Pendleton bill applies to only one seventh of our civil officers and can be broken in spirit if not in letter; our consular service is still a refuge for those who desire to travel abroad at Government expense; foreign courts have rebuked our diplomatic system by refusing to accept representatives appointed for other reasons than that of fitness for place; "offensive partisanship," when other pretexts fail, can be made to cover a multitude of removals; in our State and local administrations scarcely an attempt at reform has been made.

A fourth period in the history of the appointing power is to come—a *reformed* period; when the chief Executive can boast like the great Premier that his sole patronage is the appointment of his private secretary; when every legislator can say, with a leading member of the House of Commons, that he is without power to influence in the smallest degree the appointment of a custom-house officer or an exciseman; when both Executive and Congress, freed from their duties of dispensing office, can turn their attention to more important questions of state; when our civil service will be in reality, and not in the idle jest of a politician, "the best in the world."

## APPENDIX.

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The following table is a partial list of proposed measures bearing upon the appointing power. The date of introduction, place, author, and final result are given, and also in the case of extended discussion the principal supporters and opponents. The list does not include all propositions to make members of Congress ineligible to appointment, nor all of those to secure general election of officers by popular vote. It is continued to the date of the Pendleton bill.

1789. May 19th, House. Bill establishing the Department of Foreign Affairs. Debate on the power of the President alone to remove officers. Supported by Madison, Ames, Vining, Sedgwick, Benson, Scott; opposed by White, Gerry, Bland, Livermore, Page, Stone. Carried, June 24th. Yeas 29, nays 22. Discussed in the Senate July 14th. Carried, July 18th, by the casting vote of the Vice-President.

1806. February 24th, House, John Randolph. Proposed amendment making judges of the United States' Courts removable on the joint address of both Houses of Congress. After a short debate, postponed indefinitely.

February 26th, House, John Randolph. Resolution to prevent any officer of the army or navy from holding any United States civil office. Carried, April 2d, 94 to 21.

1808. April 12th, Senate, Hillhouse. Proposed amendments giving the House a voice in appointing and removing. Not acted upon.

1809. January 25th, House, Josiah Quincy. Resolutions of inquiry in regard to the Boston collectorship, the ultimate object being the impeachment of President Jefferson. Lost, 1 to 117.

1810. December 20th, House, Macon. Amendment making members of Congress ineligible to office. Rejected, February 8, 1811. Yeas 59, nays 61.

1813. June 14th, Senate. Action in regard to Mr. Gallatin. Resolution of Mr. Anderson declaring that the duties of Secretary of the Treasury and Envoy Extraordinary were incompatible and ought not to be united. Carried, 20 to 14.

1820. April 15th, House, Cobb. Amendment making members of Congress ineligible to appointment. Lost, 72 to 87.

April 20th, Senate, Dickerson. Bill to secure the appointment for a limited period of collectors, naval officers, and surveyors of the customs. Known as the Four-Years' Limitation Law. Carried without debate, May 5th, 29 to 4. Passed by the House without debate and approved May 15th. Subsequently extended

to the office of district-attorney, territorial justice, surveyor-general, register of land-office, receiver of public moneys, and postmasters of fourth and fifth class.

1825. December 19th, Senate, Cobb. Resolution providing for the ineligibility of members. Bill reported by Mr. Benton, March 1, 1826. Tabled, May 10th.

1826. March 30th, Senate, Branch. Resolution protesting against the competency of the President to appoint ministers to the Panama Congress without advice of the Senate. Tabled, April 27th, 23 to 21.

May 4th, Senate, Benton. Report on Executive patronage, with two bills to secure faithful officers in their positions and to displace defaulters. Tabled at the request of Mr. Macon, May 12th.

1830. March 1st, Senate. Speech of Senator Grundy on Foot's Resolution. In favor of President Jackson's removals.

March 4th, Senate. Clayton on Foot's Resolution. Opposed to removals of the President.

March 15th, Senate. Livingston on Foot's Resolution. In favor of the President's course.

March 17th, Senate, Barton. Speech in secret session opposed to Executive power of removal.

March 17th, Senate, Marks. Speech in secret session asking reasons for removal of a certain officer.

April 21st, Senate, Barton. Resolution asking the President for reasons for removal of a certain officer. Tabled.

April 26th, Senate, Barton. Resolution asking reasons for removal of an officer. Tabled, 22 to 15.

April 28th, Senate, Holmes. Resolution protesting against the course of the President and asking him to give reasons for all removals made during the recess of the Senate. On motion of Mr. Grundy indefinitely postponed, 24 to 21.

1832. January 26th, Senate, Ewing. Resolutions against the removal of officers without sufficient cause. Not discussed.

December 20th, House, Wickliffe. Amendment making members of Congress ineligible to office. Postponed.

December 21st, House, Wickliffe. Resolution asking for list of members of Congress appointed to office after April, 1826. Carried, December 26th, 102 to 74.

1834. March 7th, Senate, Clay. Resolutions in favor of removal of officers only by consent of the Senate. At the time appointed for their discussion, the debate on the presidential protest was in progress and they were never taken up.

1835. February 9th, Senate, Calhoun. Executive patronage bill, one article providing for the repeal of the Four-Years' limitation law. Supported by Calhoun, Clay, Webster, Ewing, and others; opposed by Grundy, Buchanan, Wright, Tallmadge, and others. Carried in the Senate, February 21st, 31 to 16. Introduced again in the Senate, December 29th, and carried February 3, 1836, 23 to 20. Taken up by the House, February 3d; referred to Committee of the Whole, February 25th; never brought to a final vote.

1838. February 19th, House, Patton. Resolutions providing for inquiry as

to the number of officers removed without cause and for bill to limit Executive patronage. Tabled.

December 21st, Senate, Crittenden. Bill to prevent interference of public officers in elections. Lost, February 27, 1839, 5 to 28.

1839. February 12th, Senate, Tallmadge. Resolution asking for names of deputy postmasters removed after March 4, 1837. Adopted.

March 2d, House, Mercer. Resolution asking for list of all officers removed after March, 1789, and number not renominated under the Four-Years' Limitation law. Adopted.

1840. February 10th, House, Bell. Bill to repeal the Four-Years' Limitation law. Referred to Committee of the Whole and not debated.

1841. June 17th, Senate, Buchanan. Resolution asking for names of officers removed after March 4, 1841. Amended so as to include all officers removed after March 4, 1829. Carried, July 10th.

July 1st, Senate, Benton. Resolutions asking reasons for removal of certain persons named therein. Not acted upon.

December 29th, Senate, Clay. Amendment providing for ineligibility of members of Congress to civil office. Not voted upon.

1842. March 21st, House, Andrews. Resolution asking for names of members of Congress who had applied for office. Adopted.

1843. January 9th, House, Botts. Resolutions having in view the impeachment of President Tyler for misuse of the appointing power. Lost, 83 to 127.

1844. January 3d, House, Thomasson. Resolution in favor of providing by law that all removals should have the reasons thereof assigned. No action.

December 17th, House, Grider. Resolution asking for a bill to regulate the power of removal.

1845. December 19th, House, Woodworth. Resolution asking for a bill providing for the appointment of officers in proportion to the population and limiting the term to four years. Adopted.

December 31st, House, Rathbun. Bill reported in accordance with the resolution of December 19th. Desultory discussion, June 10, 1846. Not brought to vote.

1846. January 13th, House, Andrew Johnson. Resolutions to secure rotation in office. Not acted upon.

December 16th, House, Benton. Notice of bill to regulate the appointment of officers and guard the public service from improper influence. Not acted upon.

1848. December 12th, House, Wentworth. Resolution asking for a bill to secure the election of all officers directly by the people. Bill not presented.

1849. December 24th, Senate, Bradbury. Resolution asking that the Senate be informed of all charges preferred against officers removed after March 4, 1849. Final vote was to have been taken July 10, 1850, but the death of President Taylor prevented. Introduced again, with some modifications, December 12, 1850. Partisan debate maintained in favor of the resolution by Senators Bradbury, Douglas, Bright, Cass, Hale, Downs, and others; on the negative by Senators Smith, Mangum, Bell, Webster, Underwood, and others. Not voted upon.

1850. January 3d, Senate, Dickinson. Resolutions asking in regard to removal of postmasters and reasons for appointments made. Adopted, March 4th.

January 9th, Senate, Seward. Bill to prevent sale and farming out of offices. Not brought to vote.

1853. February 28th, Senate, Hunter. Amendment offered to the civil appropriation bill providing for the classification of clerks in all the departments except those of State and Justice and for admission to these classes only after examination. Carried in both Houses and approved March 2d.

1856. August 18th, Senate. Act to regulate the diplomatic and consular service. Section 7, inserted while the bill was before the Committee, provided for twenty-five consular pupils. December 30, 1856, in the House, Mr. Haven moved to strike out the above section and it was carried, ayes 90, no further count being taken.

1864. April 30th, Senate, Sumner. Bill to secure greater efficiency in the civil service by providing for competitive examinations. Printed and laid on the table.

June 20th, Senate. Amendment to consular and diplomatic appropriation bill providing for twenty-five consular pupils. The House non-concurred in the amendment. The conference committee agreed upon thirteen consular clerks, and the amendment was passed with the bill.

1865. December 20th, House, Jenckes. Bill to regulate the civil service by providing for competitive examinations. Referred to Committee on the Judiciary, then to select committee, and not reported until June 13, 1866. Committee continued during the second session of Congress and bill presented January 29, 1867.

1866. June 28th, Senate, B. Gratz Brown. Resolution asking for a bill reorganizing the civil service so as to secure appointment after examination, promotion on merit, and dismissal only for cause. Adopted.

December 3d, Senate, Williams; House, Stevens. Tenure-of-office bill, providing for the removal of officers only with the consent of the Senate. Supported in the Senate by Senators Williams, Edmunds, Sumner, Sherman, Wade, Howe, Morrill, Wilson, and others; opposed by Senators Buckalew, Cowan, Johnson, Doolittle, Hendricks, and others. After several amendments, passed by the Senate, January 18, 1867, 29 to 9. In the House the bill was supported by Representatives Thayer, Kasson, Blaine, Garfield, Hayes, Jenckes, Conkling, Schenck, and others. The opposition was not strong and was conducted mainly by Mr. Hise. Passed by the House, February 2, 1867, 111 to 38. Vetoed by the President on the ground that it was unconstitutional. Passed over the veto, March 2, 1867, in the Senate, 35 to 11; in the House, 133 to 37.

1867. January 29th, House. Bill presented which was a modification of the one introduced by Mr. Jenckes, December 20, 1865. Tabled, February 6th, 72 to 66.

1868. May 14th, House, Jenckes. Bill similar to that of Dec. 20, 1865. Advocated by author of the bill. House adjourned without action.

July 2d. Senate, Patterson. Bill to provide for greater efficiency in the diplomatic and consular service. Not acted upon.

1869. Jan. 11th, House, Washburn. Bill to repeal tenure-of-office act. Passed the House, 121 to 47. Offered in the Senate by Senator Morton as an amendment to the appropriation bill. Defeated March 2d, 22 to 26.

Jan. 26th, Senate, Sherman. Resolution inquiring into the expediency of reorganizing the civil service so as to secure greater efficiency and economy. Adopted and concurred in by the House. Rescinded by Senate, March 15th.

March 10th, House, Butler. Bill to repeal the tenure-of-office act. Carried, 138 to 16. In the Senate, various amendments proposed which the House refused to accept. A conference committee was appointed and a bill prepared which substantially repealed the tenure-of-office bill. Adopted by the Senate, 42 to 8; by the House, 108 to 67. Approved April 5th.

April 5th, House, Jenckes. Bill to provide for competitive examinations in the civil service, introduced a third time. Referred to committee and not discussed.

Dec. 7th, Senate, Trumbull. Bill to relieve members of Congress from importunity by office-seekers and to preserve the independence of the departments of government. Reported with amendments, discussed at length, but finally passed over.

Dec. 20th, Senate, Schurz. Bill to secure greater efficiency in the civil service. Partially the same as the Jenckes bills, but included all classes of civil officers. Passed over.

1870. May 3d, House, Jenckes. Fourth attempt to pass a civil-service-reform bill. Supported almost alone by Mr. Jenckes. Opposed by Representatives Peters, Maynard, Bingham, and Niblack. Recommitted.

Dec. 12th, House, B. F. Butler. Motion to repeal the tenure-of-office bill, and the amendment to it of April 5, 1869. Carried in the House, 159 to 25. Indefinitely postponed in the Senate.

1871. Jan. 4th, House, Coburn. Amendment to the Constitution proposed providing for the election by the State or district of all United States officers, except certain judicial officers. Referred.

Jan. 4th, Senate. Rediscussion of Senator Trumbull's bill of Dec. 7, 1869. Opposed by civil-service reformers who proposed as an amendment a distinctively civil-service-reform bill. Passed over.

January 9th, House, Jenckes. Fifth attempt to pass the Jenckes bill. Referred to committee and not discussed.

January 30th, House, Armstrong. Resolution giving the President authority to prescribe rules for admission into the civil service, and to appoint persons to conduct inquiries. Referred to committee and afterward passed, March 3d, as an amendment to the appropriation bill.

March 3d, Senate, Trumbull. Resolution of January 30th proposed as a rider to the appropriation bill. Adopted without discussion, 32 to 24. Strongly opposed in the House, especially by Mr. Logan, but finally concurred in, 90 to 20.

December 4th, Senate, Edmunds. The bill drawn up by Mr. Jenckes introduced, but not acted upon.

December 18th, House, Stevenson. Bill making it a penal offence for any member of Congress to recommend to office any person known to be dishonest or incompetent. Referred and not acted upon.

1872. January 8th, House, Willard. Bill making it unlawful for a member of Congress to solicit office for any one from the President or heads of departments. Discussed at length and recommitted, April 19th, 97 to 79.

January 8th, House, Upson. Resolution asking for a bill to provide for the admission into the civil service of persons from each state according to the population. Adopted.

January 8th, House, McCrary. Proposed amendment to the Constitution, providing for fixing the term of office at four years, the election of postmasters and other officers whose duties are within the State, by the people of the State, or part of State, and for removal by the President, except for political or religious reasons. Referred to committee and not acted upon.

January 10th, Senate, Carpenter. Resolution stating that any law designed to relieve the President or heads of departments of the full responsibility of making appointments was unconstitutional. Discussed at length by those who desired an opportunity to express their opposition to the act of March 3, 1871. Not voted upon.

January 17th, House, Snapp. Resolution adverse to the report of the civil-service commission. Discussed but no action taken.

January 24th, Senate, Frelinghuysen. Bill making appropriation to enable the President to put in force the rules regulating the civil-service. Reported adversely and indefinitely postponed.

February 12th, House, Perry. Resolution to prohibit members of Congress from soliciting office. Referred and no action taken.

May 8th. Senator Frelinghuysen's bill of January 24th passed as an amendment to the civil appropriation bill. \$25,000 appropriated.

May 14th, House, B. F. Butler. Bill to repeal all tenure-of-office bills. Passed by the House without a division; referred in the Senate.

1874. Jan. 19th, House, Smart. Bill to improve the civil service. Referred.

Feb. 2d, House, B. F. Butler. Resolution giving preference on civil-service examinations to disabled soldiers or their relatives. Carried unanimously. Passed in the Senate, Feb. 20th, 36 to 8.

April 1st, House, Smith. Bill to improve the civil service. Referred

June 11th, House, Kellogg. Amendment to the appropriation bill giving \$25,000 to carry out the act of March 3, 1871. Rejected, 48 to 108.

June 13th, House, Kasson. Amendment to the civil-appropriation bill repealing the Act of March 3, 1871, and one providing that the relatives of soldiers and sailors be given the preference in all civil appointments, that appointments be made as nearly as possible from the Congressional districts, and that when removals occur the reasons for removals be made on the records. Passed by the House, 74 in favor, noes not counted. The Senate amended by voting \$15,000 for the civil-service commission. The House non-concurred, and after a conference committee both amendments were dropped. This left the act of March 3, 1871, on the statute-books, but no further appropriations were made to carry it out.

1876. Jan. 24th, House, A. S. Williams. Amendment to the Constitution providing for a civil-service commission who should have absolute advisory and

confirmatory powers in appointing and removing officers, and providing for the election of certain officers by the localities where they were to serve, these officers to be removed by the commission, but not for political or religious reasons. Referred.

June 5th, Senate, Clayton. Amendment to the appropriation bill providing that appointments be apportioned among the States and territories according to population. Mr. Edmunds offered as an amendment that such appointments be made after competitive examination. Rejected, 11 to 28. Original amendment of Mr. Clayton rejected, 22 to 23. Renewed and tabled, 21 to 18.

Aug. 12th. Bill to prevent political assessments. Inserted as a rider to the appropriation bill by the Committee on Conference, and agreed to by both Houses without a division.

1880. Dec. 15th, Senate, Pendleton. Bill to regulate the civil service and promote its efficiency by providing for competitive examinations. Referred.

Dec. 15th, Senate, Pendleton. Bill to prohibit political assessments. Referred.

1881. Jan. 10th, House, Carpenter. Amendment to the Constitution providing that officers hold their positions for four years, and giving Congress the privilege of providing for the election of inferior officers directly by the people. Referred.

Dec. 6th, Senate, Pendleton. Bill to provide for appointments after competitive examinations. Referred and reported, but not voted upon.

Dec. 6th, Senate, Pendleton. Bill to prevent political assessments. Referred. Subsequently became part of the bill approved Jan. 16, 1883.

Dec. 13th, Senate, Voorhees. Proposed amendment giving the election of officers directly to the people. Referred.

December 13th, House, Carpenter. Amendment of January 10, 1881, repeated and referred.

December 13th, House, Sherwin. Amendment providing for the election of postmasters by the people and for their removal by the President, except for political or religious reasons. Referred.

December 13th, House, Willis. Bill to prevent political assessments. Referred.

1882. January 18th, Senate, George. Amendment providing for the election of a greater number of officers by the people for a term of four years. No action taken.

January 23d, House, Geddes. Amendment providing for the appointment of all officers, except heads of departments, by a commission of three, who should also have the power of removal, the Senate having the power of confirmation. Referred.

March 21st, Senate, Pendleton. Amendment providing for the election of postmasters, marshals, and certain other inferior officers directly by the people. Referred.

June 6th, Senate, Slater. Bill to prevent political assessments. Referred.

December 4th, House, Herbert. Bill to prevent political assessments. Referred.

December 27th, Senate. The Pendleton bill passed by a vote of 38 to 5.

Supported by all the Republicans and all the Democrats except five. Passed by the House January 4, 1883, 155 to 47. Supported by 102 Republicans, 49 Democrats, and 4 Nationals. Opposed by 39 Democrats, 7 Republicans, and 1 National. Approved by the President, January 16, 1883.

December 28th, Senate. Bill passed to prevent political assessments. Tabled in the House because incorporated in the Pendleton bill.

1883. January 9th, Senate, Hawley. Bill to prevent political assessments. Incorporated into the Pendleton bill.

January 15th, House, Gibson. Bill to repeal the act of May 15, 1820. Referred.

PRINCIPAL AUTHORITIES, NOT INCLUDING NEWS-PAPERS AND PERIODICALS. THE ARRANGEMENT IS CHRONOLOGICAL.

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I.

*General and Statistical.*

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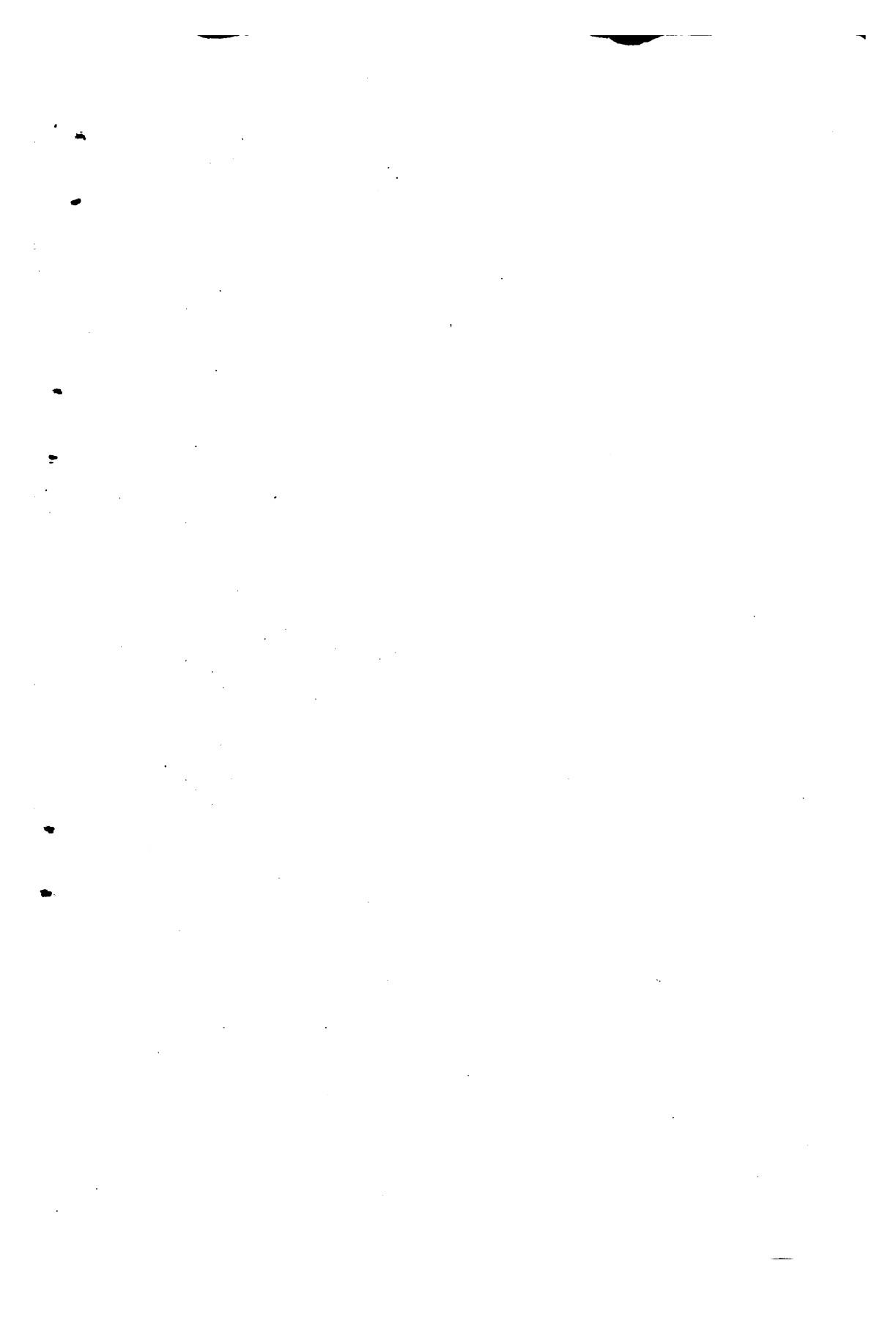
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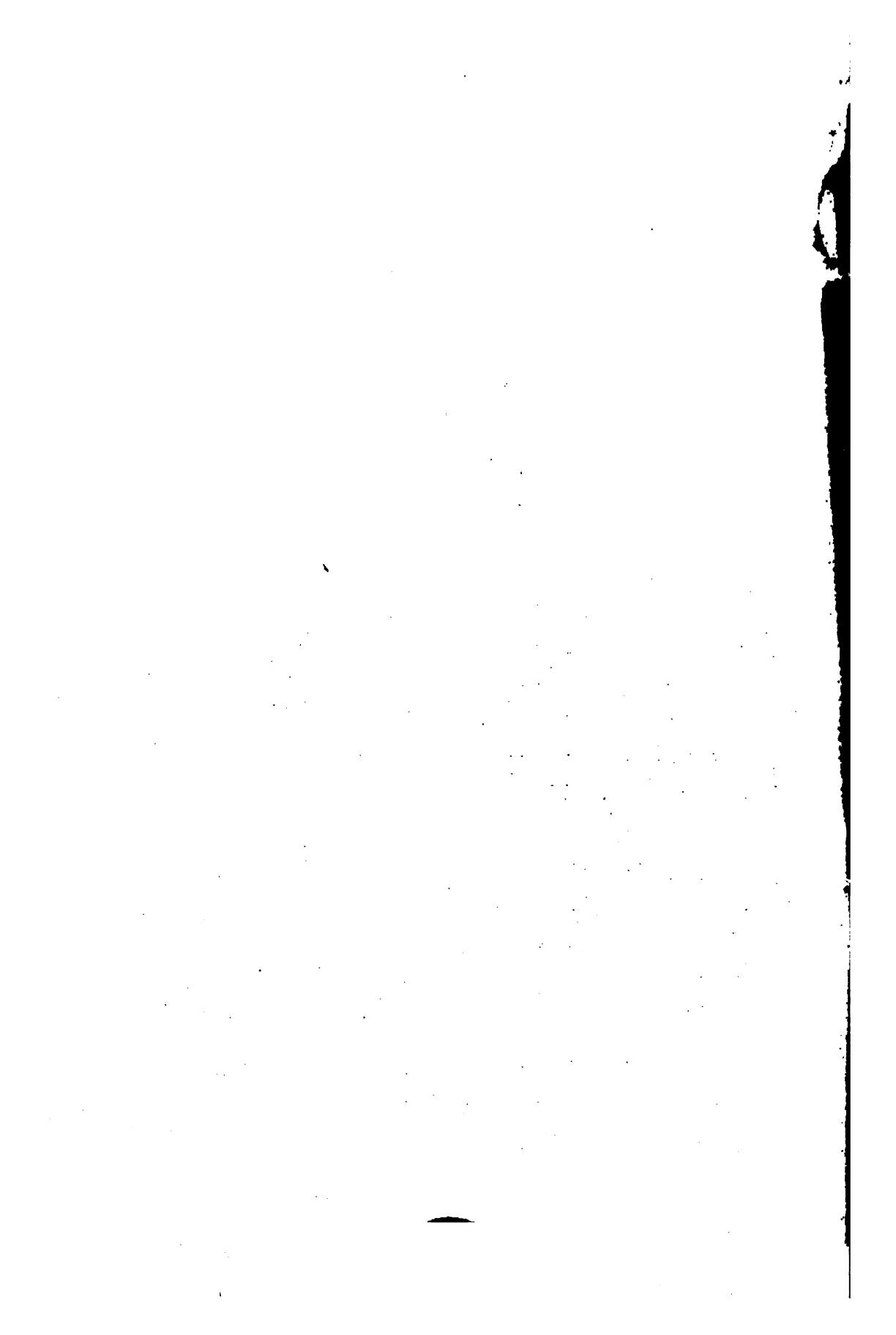
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THE END.







Association. These officers shall be elected by ballot at each regular annual meeting of the Association.

#### V.

The Executive Council shall have charge of the general interests of the Association, including the election of members, the calling of meetings, the selection of papers to be read, and the determination of what papers shall be published.

#### VI.

This Constitution may be amended at any annual meeting, notice of such amendment having been given at the previous annual meeting, or the proposed amendment having received the approval of the Executive Council.

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